United States Court of Appeals
for the Second Circuit

APPENDIX

77-7060

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FILED
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A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

HOWARD M. LASKER and IRVING GOLDBERG,
Plaintiffs-Appellants,

—against—

HARRY G. BURKS, JR., EDWARD B. BURR, THOMAS F. CHALKER, JOHN R. HAIRE, HARVEY C. HOPKINS, S. P. HUTCHISON, DONALD L. KEMMERER, A. S. MIKE MONRONEY, CHARLES F. PHILLIPS, JEPTHA H. WADE, ANCHOR CORPORATION and FUNDAMENTAL INVESTORS, INC.,
Defendants-Appellees.

B p/s

ON APPEAL FROM ORDERS AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX
(Volume II—pages 376a-788a)

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TABLE OF CONTENTS

Page

Docket Entries 1A

Complaint 6A

Affidavit of Leonard Joseph sworn to June 22, 1973, in Support of Motion for a Stay of Proceedings 24A

Affidavit of Charles F. Phillips sworn to June 19, 1973, in Support of Motion for a Stay of Proceedings..... 29A

Affidavit of Mary S. O'Connor sworn to June 19, 1973, in Support of Motion for a Stay of Proceedings 31A

Notice of Motion 33A

Affidavit of Roger T. Wickers sworn to January 27, 1975, in Support of Motion to Dismiss 35A

Affidavit of Leon T. Kendall sworn to January 23, 1975, in Support of Motion to Dismiss 39A

- Exhibit A to Affidavit of Leon T. Kendall, Biographical sketch of Stanley H. Fuld ... 51A

- Exhibit B to Affidavit of Leon T. Kendall, Report of Stanley H. Fuld to Board of Directors of Fundamental Investors, Inc., dated December 5, 1974 .... 56A

- Exhibit C to Affidavit of Leon T. Kendall, Supplemental Report of Stanley H. Fuld to Board of Directors of Fundamental Investors, Inc., dated December 18, 1974... 96A

Page

Exhibit D to Affidavit of Leon T. Kendall, Minutes of meeting of Board of Directors of Fundamental Investors, Inc., dated December 18, 1974 .... 103A

Exhibits to Minutes of December 18, 1974, Special Meeting of Board of Directors 117A

Exhibit E to Affidavit of Leon T. Kendall, Letter from William J. Stephens to Leon T. Kendall, dated December 31, 1974 .... 121A

Exhibit F to Affidavit of Leon T. Kendall, Minutes of meeting of the Board of Directors of Fundamental Investors, Inc., dated January 6, 1975 .... 125A

Supplemental Affidavit of Roger T. Wickers sworn to May 7, 1975, in Support of Motion to Dismiss 132A

Fundamental Investors, Inc., Prospectus dated May 1, 1972 pp. 1 & 7 .... 133A

Fundamental Investors, Inc., Prospectus dated May 1, 1974 pp. 7, 8 & 19 .... 135A

Memorandum Decision of Judge Henry F. Werker, D.J. and Order dated September 24, 1975 .... 137A

Amendment of Judge Henry F. Werker, D.J. to Memorandum Decision and Order dated October 17, 1975............. 156A

Page

Order of Judge Henry F. Werker, D.J., dated January 6, 1976 .... 158A

Affidavit of Roger T. Wickers sworn to July 23, 1976, in Support of Renewed Motion to Dismiss 160A

Affidavit of James C. Sargent sworn to September 17, 1976, in Opposition to Renewed Motion to Dismiss 167A-1

Affidavit of Anthony L. Tersigni sworn to September 20, 1976, in Opposition to Renewed Motion to Dismiss 171A

- Exhibit A to Affidavit of Anthony L. Tersigni, Extract of minutes of meeting of Board of Directors of Fundamental Investors, Inc., July 28, 1971 .... 173A
- Exhibit B to Affidavit of Anthony L. Tersigni, Extract of minutes of meeting of Board of Directors of Fundamental Investors, Inc., November 17, 1971 .... 175A
- Exhibit C to Affidavit of Anthony L. Tersigni, Extract of minutes of meeting of Board of Directors of Fundamental Investors, Inc., April 26, 1972 .... 177A
- Exhibit D to Affidavit of Anthony L. Tersigni, Extract of minutes of meeting of Board of

Page

Directors of Fundamental Investors, Inc., June 27, 1973 .... 180A

Exhibit E to Affidavit of Anthony L. Tersigni, Extract of minutes of meeting of Board of Directors of Fundamental Investors, Inc., July 25, 1973 .... 182A

Exhibit F to Affidavit of Anthony L. Tersigni, Extract of minutes of meeting of Board of Directors of Fundamental Investors, Inc., dated March 27, 1974 .... 184A

Exhibit G to Affidavit of Anthony L. Tersigni, Compensation Schedules of Minority Directors... 186A

Exhibit H to Affidavit of Anthony L. Tersigni, Prospectus of Fundamental Investors, Inc., May 1, 1975 p.1 .... 191A

Exhibit I to Affidavit of Anthony L. Tersigni Article Twelfth, Certificate of Incorporation of Fundamental Investors, Inc 192A

Contract between Fundamental Investors, Inc. and Anchor Corporation dated November 30, 1973, paragraphs "Second"-"Fourth" 194A

Chart showing Membership of Directors Qualifications Committee 195A

Page

Extract of minutes of meeting of Board of Directors of Fundamental Investors, Inc. of July 24, 1974 .... 196A

Seward & Kissel Memorandum dated January 6, 1975 .... 199A

Reply Affidavit of Roger T. Wickers, sworn to November 9, 1976, in support of Renewed Motion to Dismiss 205A

Appendix A to Reply Memorandum in Support of Renewed Motion to Dismiss, Chart showing relationships of members of Disinterested Quorum to Co-directors 209A

Deposition of John R. Haire on February 10, 1976 .... 214A

Deposition of Leon T. Kendall on February 26, 1976 .... 463A

Continued Deposition of Leon T. Kendall on March 24, 1976.. 601A

Deposition of William J. Stephens on February 26, 1976 .... 660A

Deposition of Beryl Robichaud on March 9, 1976 .... 799A

Deposition of Mary S. O'Connor on March 9, 1976 .... 911A

Deposition of Louis Fredrick Laun on April 6, 1976 .... 995A

Opinion of Judge Henry F. Werker, D.J. dated January 7, 1977 .... 1138A

Judgment 1155A

Notice of Appeal 1156A

BY MR. TERSIGNI:

Q Mr. Haire, before we leave Miss Robichaud and Mr. Stephens, can you tell me when they were nominated by the board of directors for election? You have already said they were elected at the September meeting of stockholders. But when were they nominated?

A Well, it would have been some time, I would guess, approximately three to four months -- four months, probably, ahead of that. The minutes of the fund's directors' meetings would confirm what month the slate was approved.

Q That would have been the June meeting or the May meeting?

A I would guess it would have been May, but I'm not so sure.

Q May or June 1973?

A There is no sense guessing when the record will verify what month it was.

MR. TERSIGNI: I call for production of the minutes of the meeting of the board at which Miss Robichaud and Mr. Stephens were nominated.

Q Do you know whether that was the same board meeting at which the question of applying for a stay of the Lasker case was passed on by the board?

furnished to us by Mr. Souther, relating to a meeting of the board of July 25, 1973, that Miss Robichaud was designated as a nominee for election at a meeting of the board on July 25, 1973. We still don't know about Mr. Stephens. So I would continue my request as to that.

Q Mr. Haire, after Miss Robichaud and Mr. Stephens were elected in 1973, I believe the next nominee proposed and elected to the board was Mr. Leon T. Kendall; is that correct, sir?

A That would be correct.

Q And he was elected, I assume approved and elected, in 1974?

A Correct.

Q Who suggested Mr. Kendall as a possible nominee to the board of directors?

A The directors' qualification committee suggested him to the board of directors. I proposed him to the directors' qualification committee.

Q But he was originally introduced through you, or by you?

A That's right. I proposed his name to the committee.

Q How long have you known Mr. Kendall?

A I've known of Mr. Kendall for better than a decade. I've known him I think somewhat less than a decade. He was a resident of Elizabeth, New Jersey, before moving to Milwaukee. And he was also a prominent individual in the securities industry, having served as vice president of the New York Stock Exchange, their chief economist, and also subsequently as president of the Securities Industry Association.

He was known by reputation to other members of the committee.

Q Was he formerly associated with the New York Stock Exchange?

A As I just said, he was a vice president of the Exchange.

Q I think you have previously testified today that you were associated with the Exchange back in the early '50's, or --

A Prior to his coming to the New York Stock Exchange. I did not know him when I was employed by the Exchange.

Q How did you come to meet Mr. Kendall?

A Originally I presume I met him at some industry meeting, or a meeting of the securities industry at which he was a speaker, representing the New York Stock Exchange.

Q Were your common interests with the New York Stock Exchange of any consequence in your coming to meet one another?

A No.

Q Do you consider Mr. Kendall a good friend of yours?

A I consider him a friend of mine. I've known him, as I say, both in the securities industry, as an important, prominent person, and as a resident of Elizabeth, New Jersey.

Q Do you consider him more than a passing acquaintance?

A He's a friend.

Q Is he a close friend, what you would call a close friend?

A He's a friend.

Q I understand you have said that, and I don't mean to pry, but I think this is a relevant question.

What I am asking you is, would you describe your friendship as being close or would you not?

MR. POLLACK: I object to the form of the

question.

MR. TERSIGNI: How would you like me to phrase it, Mr. Pollack?

MR. POLLACK: I don't know if the question is answerable. Mr. Haire characterized the relationship. He said he knew him, knew of him, and he is a friend.

MR. TERSIGNI: There are friends and there are friends.

MR. POLLACK: I quite agree.

MR. TERSIGNI: I am asking if he considers him a close friend.

MR. POLLACK: Ask him if he considers him anything more than a friend. Is he a social intimate?

MR. TERSIGNI: No, I don't want to ask him that. I would object to the form of that question.

Q Would you characterize him as a close friend of yours?

A I have characterized him as a friend. I have nothing to add to that statement.

Q Do you believe that Mr. Kendall would be reluctant in deciding that you should be sued?

A Not at all.

Q You don't think he would be reluctant?

A I've just testified to that.

Q You think he would want to do that, be anxious to?

MR. POLLACK: Please, Mr. Tersigni, move on.

MR. TERSIGNI: No, I am not moving on. I want an answer to the question.

MR. POLLACK: I object and I direct the witness not to answer. Mr. Haire's subjective opinion of Mr. Kendall's subjective opinion of him is about three removed from this case and the facts of this case.

MR. TERSIGNI: Mr. Haire's opinion of how quick Mr. Kendall would be to sue him I think is very relevant, in view of the fact that Mr. Haire recommended him for the board.

MR. POLLACK: Please answer the question.

THE WITNESS: May I answer the question?

MR. POLLACK: Yes.

A I have absolutely no question in my mind that if Mr. Kendall concluded that it was his responsibility as a director to bring a lawsuit against me or anyone else that he or I know, that he would, without hesitation, bring it. And I would say I would do the same.

Q Would you be reluctant to sue Mr. Kendall?

A Not at all, if I thought the circumstances were such where he should be sued.

Q Do you feel that your relationship with him is such that you would require quite a bit of showing that that action should be taken, as opposed to somebody you didn't know at all?

MR. POLLACK: I object to the form of the question. What is "quite a bit of showing"?

MR. TERSIGNI: Let him answer subject to the form objection.

MR. POLLACK: Can you answer that question in that form, Mr. Haire?

MR. FRIEDMAN: Could I hear the question back? I lost it.

(The pending question was read.)

MR. POLLACK: I object to the form of the question. Please rephrase the question.

Q What I am asking you, Mr. Haire, is very simply this: If you were asked to make a judgment whether or not the fund should sue Mr. Kendall, as opposed to his making the judgment which he made with respect to you, do you feel that your relationship with Mr. Kendall is sufficiently close that you might be more circumspect in making that decision to go forward against Mr. Kendall than you might be if you didn't know Mr. Kendall from a hole in the wall?

Does that clarify my question?

MR. POLLACK: I object to the form. The witness may answer.

A I believe that I could be impartial enough in carrying out my responsibilities as to judge Mr. Kendall quite objectively, just as if I served on a jury I believe I could weigh the evidence and make decisions of that nature.

Q I have no doubt you would try to be objective, Mr. Haire, and I am not implying that you wouldn't. I am simply suggesting, and I am asking you, quite frankly, to tell me whether you feel that your relationship is such that, unwittingly or otherwise, you would be a little bit more circumspect about deciding to sue Mr. Kendall than you would about deciding to sue somebody that youdidn't know at all.

A I don't see how one can answer that question honestly in ~~this~~ light OF THE WAY that you phrase it.

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I had considerable reluctance in voting to sue Goldman, Sachs, but we sued them. And if you asked me whether I weighed that more carefully than I would have if the suit had been against somebody walking down the street that I had never seen, I probably would answer that, that I would weigh it more carefully. But I don't believe that says anything at all.

Q You don't think that your acquaintanceship or intimacy with a person would have any effect, conscious or otherwise, on your reluctance or non-reluctance to authorize an action against them?

MR. POLLACK: I object to the form of the question.

A I stated my belief that I could form a judgment to sue Mr. Kendall, and I believe he could form a judgment to sue me.

Q Let me ask you this question: Would you feel comfortable about making that sort of a decision with respect to Mr. Kendall?

MR. POLLACK: I object. The question is irrelevant. Mr. Haire is not being asked to sue Mr. Kendall.

MR. TERSIGNI: Mr. Kendall was asked whether he should sue, in effect, Mr. Haire.

This man voted for and recommended this director, who is one of the so-called disinterested directors. And I think I am entitled to pursue this line.

It would be relevant on --

MR. POLLACK: Mr. Tersigni, cut the speech a little bit and give a question, and let the witness answer it, if he can. Give him a question and let him try to answer it.

MR. TERSIGNI: I already did, but I will repeat it.

Q Do you feel that your relationship with Mr. Kendall is such that if you were asked whether the fund should sue him, regardless of whether ultimately you could make what you believe to be an objective decision, would you feel uncomfortable, would you feel that you would rather not be deciding that sort of thing about a man with whom you had that relationship?

A If I concluded that Mr. Kendall should be sued, I could make that decision without discomfiture.

Q You wouldn't ask to be excused from that particular function?

A I would not.

Q In favor of someone who may not be as close to Mr. Kendall?

A I would not.

Q When in 1974 did you recommend Mr. Kendall?

A The record would show. I don't recall it.

Q According to minutes of the qualifications committee that I have, it would indicate that on March 27, 1974, the committee gave consideration to Mr. Kendall's qualifications, and that the board apparently nominated Mr. Kendall for the slate on March 27, 1974.

I believe that's accurate.

A All right.

Q So you certainly were considering Mr. Kendall, pursuant to your recommendation, in committee, by the end of March, and by the end of -- well, very shortly, or on the same day, as, a matter of fact, the end of March, the board was approving him as a candidate; correct?

A Correct.

Q Approximately four months later, on or about July the 24th, 1974, the board takes formal action at a board meeting to refer to a quorum of five, including this very gentleman, Mr. Kendall, the question of what, if any, action the board should take with respect to the litigation naming you as a defendant; correct?

A Correct.

Q And I would take it that some time between March 27, 1974, if not earlier, and prior to that board meeting, the subject of the board's authorizing these five people to so act was the subject of some discussion?

A That is not correct.

Q The first time it was discussed was on the very day of that board meeting?

A That's what I've already testified.

Q And you are absolutely sure of that?

A That is my recollection.

Q And it was on that very first day that the suggestion was first made to retain Judge Fuld?

A That's correct.

(Continued on page 228.)

Q Did someone pick up the phone at the board meeting and call Judge Fuld and establish that he was available?

MR. POLLACK: Mr. Tersigni, if you had read the materials that were produced pursuant to your request, you would see that your question is ill founded factually.

MR. TERSIGNI: The materials indicate quite clearly, Mr. Pollack, that Judge Fuld's availability for this task was established prior to this meeting. That's why I have difficulty accepting the statement that the matter was not discussed until the board of directors' meeting.

MR. POLLACK: Mr. Haire was saying that the matter had not been discussed with the directors.

MR. TERSIGNI: No, that's not what I asked him.

THE WITNESS: That's my response. I didn't understand that.

Q What I asked you, sir, was whether between March 27, '74, and the formal meeting of the board of directors, the subject of delegating this function to these five people was discussed, among anyone.

It was obviously not discussed at a board meeting. But did you talk about it with other people at Anchor; did you talk about it to Mr. Souther; did you talk about it to anybody?

A I would have thought it was discussed in July. I don't have any specific recollection of when.

Q But when you recommended Mr. Kendall for a spot on the board, did you have any understanding or expectation that within four months there would be delegated to a group, including Mr. Kendall, the decision whether a suit should be continued against a number of people, including yourself?

A No, I did not. We were about to go to trial against Goldman, Sachs.

Q You were about to go to trial?

A Yes.

Q When did you first become aware of the fact that it might be settled?

A Very late.

Q July?

A Certainly July.

Q At that time did it occur to you that the five so-called disinterested directors that had been approved by you and others on the committee might very shortly thereafter be asked to make the decision I described earlier?

MR. POLLACK: Mr. Tersigni, Mr. Haire has been asked these questions earlier today. He responded that subsequent to the settlement with Goldman, Sachs, consideration was then given by the board at the July 24th meeting.

He has testified just a few moments ago that between the settlement and the July 24th board meeting he believes it was discussed. He didn't have a specific recollection of it.

Q Could you answer the question?

A Would you read the question to me?

Q Let me rephrase it. It will save time, assuming there is not another objection.

As of the beginning of July, which is when you now say the case with Goldman, Sachs might be settled, did it occur to you at that time that very soon after that these five people, including Mr. Kendall, whom you just recently recommended, might be asked to decide whether or not the Lasker case should be continued?

MR. POLLACK: Are you talking about prior to the settlement or subsequent to the settlement?

MR. TERSIGNI: I am talking about at the beginning of July, when he says he first found out that the case might be settled.

A In the beginning of July, as best I can recall it, we were devoting every ounce of our energy to preparation for the trial against Goldman, Sachs, and it was not until the eve of trial that it became evident that there was a possibility of settlement of the case.

Q Was that the first time you were told of settlement overtures in the case?

MR. POLLACK: Objection. The question is absolutely outside the scope of these proceedings. I direct the witness not to answer.

Q When you were told about the settlement possibility, at the time you just indicated, did it occur to you that since the case might well be settled the decision I just described would then have to be made?

A As I testified earlier, sometime in July of '74, when the prospect of settlement became quite real, obviously the question of where do we go if we do settle it arose.

Q Why did it arise, in your mind?

A Why?

Q Yes.

A Because ~~we were not --~~ if we settled the case, the fund would not recover all the moneys that had been lost, and, therefore, the question which had been pending since 1970 would be raised again.

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Q Did it ever occur to you previous to this time what would happen if the Goldman, Sachs case was not settled, but went to trial, and the fund recovered nothing? Did that possibility ever occur to you, or did you assume that that could not happen?

A We had pretty good reason, based upon the facts which we had unearthed, to believe that Goldman would be held liable for something.

Q It never occurred to you that you might lose that case?

A Of course it occurred to me that we might lose that case. You can lose any case.

Q Did you think what the effect would be vis-a-vis yourself and Anchor if the case were not settled, went to trial and you lost it?

A You are talking about -- what period of time are you talking about?

Q Any time subsequent to 1970, when you may have thought about it, if you did.

MR. POLLACK: Did you think about it?

Did you specifically think about that question?

A Well, certainly subsequent to the filing of the Lasker complaint, obviously one thought about it, and we assumed that the Lasker case would proceed.

Q And you thought about it particularly at the time when a motion was authorized to be made to stay the Lasker case pending the outcome of the Goldman case; is that right?

MR. POLLACK: Objection. I instruct the witness not to answer. The question of the stay is not in issue.

Q When you thought about this possibility, did you believe that if the case went to trial and it were lost, that the fund would then have to make a decision whether to sue you?

A I was already being sued ~~by~~ ALLEGEDLY ON BEHALF OF/the fund in the Lasker case. 9

Q You were being sued by two stockholders?

A On behalf of the fund.

Q That's correct.

A But the issue was joined, and the issue had to be dealt with.

Q Did it occur to you, at any time during this period, that if the Goldman case went to trial and was lost, that the fund as such, or a portion of its board, would then have to make a decision as to what position it would take with respect to the continuance of the Lasker suit?

MR. POLLACK: I object to the form of the question.

I also object, and I am going to direct the witness not to answer this line of inquiry. I recall to your attention, Mr. Tersigni, the fact that Judge Werker said the discovery shall proceed with relationship to the minority directors and the qualifications committee.

We are way away from that.

MR. TERSIGNI: The judge specifically said he would like to know about the independence of the so-called disinterested quorum.

MR. POLLACK: I think the stay proceedings question, and I also direct the witness not to answer, on the grounds that this question is absolutely outside the scope of the discovery order by Judge Werker.

BY MR. TERSIGNI:

Q You have already testified that sometime in July, when you decided that there was a substantial chance of settling the Goldman, Sachs case, you did give thought to the fact that in the event of such a settlement it would then be time to decide what action the board ought to take vis-a vis the Lasker case; is that correct?

A Correct.

Q What, if anything, did you do at that time, in connection with implementing such a decision?

MR. POLLACK: What decision?

Q What, if anything, did you do with respect to putting machinery into operation, to authorize all or part of the board to make that decision?

A I didn't PUT ANY MACHINERY INTO OPERATION 9

THE WITNESS: Would you repeat the question?

(The pending question was read by the reporter.)

A There was no machinery that I could put into operation to authorize the board to do anything. Only the board could authorize its own action.

Q But do you from time to time make suggestions to the board?

A On subjects within the realm of my responsibility, yes.

Q And your responsibility as chief executive officer of Anchor, and as president of the fund, as chairman of Anchor, and as a member of the fund's board, as a member of the board of every other fund in this group, your area of responsibility is quite broad; is it not?

A Yes.

Q As a matter of fact, there is nobody at the fund, or at Anchor, who has a broader area of responsibility than you; isn't that right?

A Except the board of directors.

Q Except the board of directors.

There is no one person, Mr. Haire, who has more to do or more to say about Anchor or these funds than Mr. Haire; isn't that right?

MR. POLLACK: I object, and I direct the witness not to answer. He has answered the question as best he could, and I think you are just belaboring the point.

MR. TERSIGNI: I think you answered it as best you could, Mr. Pollack.

BY MR. TERSIGNI:

Q Do you from time to time make suggestions to the board of directors?

A I answered that yes, in areas of my responsibility.

Q At the beginning of July, when it occurred to you that in view of what might be an imminent settlement the board would have to decide what position to take with respect to the Lasker action, did you raise that subject with counsel or with anybody else?

MR. POLLACK: I object to what he raised with counsel.

Q Did you raise that subject with anybody, excluding counsel?

A I discussed the matter with Mr. Wickers.

Q Anybody else?

A Not that I recall.

Q Did you discuss it with counsel?

MR. POLLACK: I object and I instruct the witness not to answer.

serious questions of privilege.

MR. TERSIGNI: Whether he discussed it? Unless he discussed it, there is no privilege.

MR. POLLACK: You have given him subject matter, and I think the discussion of the subject matter, and a statement if, indeed, he did discuss with counsel, by this witness, will infringe the privilege. You have officers within the company that are not blocked --

MR. TERSIGNI: I want to find out if he had discussions with counsel.

MR.POLLACK: I direct him not to answer.

Q With what counsel did you discuss it? Don't tell me what was said, just who you discussed it with.

MR.POLLACK: Same direction.

MR. TERSIGNI: And you are invoking the privilege; is that the basis?

MR. POLLACK: Correct.

Q Other than counsel and Mr. Wickers, did you discuss it with anybody else?

A No.

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Q Did you discuss with Mr. Wickers the retention or possible retention of Judge Fuld?

A Not in that context. We discussed, first of all, whether the board, with a certain number of its directors having been sued as defendants, could consider this matter at all, and concluded that since there was a disinterested quorum who were not defendants, that they probably could act.

Q Who expressed that view?

A Mr. Wickers and I.

Q Did you volunteer it? Was that your theory or his theory?

A It came out of the discussions. The question obviously proceeds in this order: If the case is settled, the 1970 statement, as set forth further in the stay in '73, the board had to consider what it will do next, but there are certain members of the board who are PROBABLY ineligible to participate in that decision because they are defendants in the case.

a

Q And this decision is being made pursuant to the position originally taken by the full board in 1970; is it not?

A It's consistent with that.

Q And so you and Mr. Wickers, between yourselves, decided that those members of the board who were defendants would be disqualified; is that it?

MR. POLLACK: I object --

A We didn't decide anything. Our analysis of the situation was that a decision might well be made by those members of the board who were not members of the board at the time of '69 and '70, and who were not defendants in the litigation.

Q Did that suggestion originate with you or with Mr. Wickers?

A It came out of our discussion and analysis of the case.

Q I understand what it came out of. But what I am saying is who first got the idea, or who first --

MR. POLLACK: Do you have any recollection of which of the two of you first mentioned it?

THE WITNESS: No.

Q Had you given any thought to this subject prior to this discussion with Mr. Wickers?

A I already testified that I had not.

Q You had never thought about whether or not a disinterested quorum could decide this question?

A I Never had focused on what a quorum was IN THIS CONTEXT 9

Q So would it be fair to assume that the germ of this thought originated with Mr. Wickers?

MR. POLLACK: Mr. Tersigni, how can you ask that question, in that form, when the witness has just said he doesn't know whether it was he or Mr. Wickers that first spoke the words? He said they were having a discussion and the idea came up. What could be clearer?

MR. TERSIGNI: What he said was, as I recall, that he had never, prior to this occasion, ever given any thought to the possibility that a disinterested quorum might make this decision. What I am asking him is whether that fact now jogs his memory.

MR. POLLACK: Does it jog your memory?

THE WITNESS: It does not.

Q You still do not remember whether you came up with the idea or whether Mr. Wickers did?

A That's correct.

Q Was there any discussion at this time with respect to whether or not special counsel ought to be retained?

A I think as part of this analysis I instructed Mr. Wickers to explore the possibility of whether it wouldn't be desirable for a disinterested quorum of the board to retain special counsel totally unrelated to the case as it had been developed up to then, to advise them, with no other prior interest in the case.

Q That idea originated with you, sir, or was it Mr. Wickers?

A Again, it came out of the discussion.

Q Who made the suggestion that special counsel be retained?

A I do not know.

Q Had you given any thought, prior to this discussion with Mr. Wickers, to whether or not it would be advisable to consult special counsel?

A No.

Q Had the board had special counsel in 1970, when it decided to defer this question?

MR. POLLACK: I object, and I instruct the witness not to answer.

Q Did you propose that special counsel be retained in 1970, or did Mr. Wickers?

MR.. POLLACK: Same instruction.

Q Does that jog your memory as to who made the suggestion in 1970?

A No.

Q Do you know who recommended that special counsel be retained in 1970?

MR. POLLACK: Same instruction.

MR. TERSIGNI: All I want to know is whether he knows. Because if he doesn't know, Mr. Pollack, we don't want to waste the judge's time. Do we? Let's establish whether he knows, and then we will get a ruling.

Q Do you know?

A Do I know what?

Q Do you know who made the recommendation in 1970 to retain special counsel, who made the report to the board on October 28, 1970?

MR. POLLACK: Same instruction.

MR.TERSIGNI: As to whether he knows? I am not asking for the identity. I just want to know whether he knows.

MR. POLLACK: I don't think the events of September of 1970 are relevant --

MR. TERSIGNI: Mr. Pollack, look --

BY MR. TERSIGNI:

Q Who first suggested Judge Fuld as possibly being retained as special counsel?

A I don't know. I did not.

Q When did you first hear of Judge Fuld as a possibility?

A It would have been very close to the time of that July board meeting.

Q How did you hear about it?

A My instructions to Mr. Wickers were to see if he could come up with the names of potential special counsel, who were sufficiently prominent, prominent in their field, and who were not in any way involved in Penn Central litigation of any sort over the past six years.

Q Those having been your instructions, my question is, how did you first hear about Judge Fuld as being a possibility.

A Mr. Wickers came back with his name.

Q He reported back to you; is that right?

A Yes.

Q And he mentioned Judge Fuld as a possibility?

A Yes.

Q Did he mention any other prominent counsel?

A I think he did.

Q Who else did he mention?

A Names ~~like --~~ that SORT ~~kind~~ of stick in my mind are people like Whitney North Seymour, and a Judge VANVOORHIS ~~van Voorhies~~, I think was a name. There may have been others. Those I remember. 9 9

Q When he reported back these suggestions, what, if anything, did you say or do?

A I think I told him that before the board meeting we'd better find out whether any of these individuals would be available and would consider representing the disinterested quorum. And that was the last I heard of it until we got to the board meeting.

Q Did you instruct him to make such inquiries?

A Yes.

Q Did you have an understanding whether he would report back to you on that?

A Well, the time is such, as I say, that if I knew Judge Fuld was available, I didn't know it much before the board meeting.

Q Did he report back to you on the subject, the results of his inquiries?

A Yes, I think he did.

Q Was this discussed at all with the fund's counsel?

MR. POLLACK: Objection. I instruct the witness not to answer.

MR. TERSIGNI: I want to know yes or no.

MR. POLLACK: I instruct the witness not to answer.

MR. TERSIGNI: On what basis?

MR. POLLACK: Discussions with counsel are outside the purview of your right to inquire.

MR. TERSIGNI: We are now right back in the middle of the so-called disinterested quorum proceedings, Mr. Pollack.

You direct him not to answer?

MR. POLLACK: Yes, I did.

Q Did you have any discussions with Mr. Wickers, or with anybody else, as to how much this might cost?

A No.

Q Was that of concern to you as the president of Fundamental?

A I have always assumed that counsel who are retained will be paid, and we have never had any problems with ~~regards~~ regard to their compensation.

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No, I don't think it was of any particular concern.

Q Did the five disinterested directors take the position that this is an expense that should be paid by Anchor, in view of the fact that they were disinterested? Did they take that position?

A I don't know, but I would hardly think they would.

Q Why would you --

A The purpose of special counsel was to be special counsel to the fund in making a decision which involved Anchor, and to suggest that that counsel should be paid by the party under question would seem to me to be exactly the reverse decision to make.

Q You don't feel that in view of the fact that what was being decided was whether or not Anchor should be sued or whether you should be sued, and so forth, that those were considerations which might prompt consideration of the legal expense being paid by Anchor or by you or by the other defendants?

A I just stated quite the contrary.

Q Were there any discussions with the disinterested directors as to who ought to pay for this?

A Not between me and they. They retained

Judge Fuld. They made any arrangements they wished to make with him, and I had nothing to do with it.

Q You had nothing to do with it, except you told Mr. Wickers to go ahead and see who was available, and you told Mr. Wickers to contact all these people and then report back to you; is that right?

A Right.

MR. SOUTHER: I object to that.

Q And then at the board this proposal was put on the table to the full board; correct?

A I told Mr. Wickers that he should ascertain whether counsel were available, and that at the meeting he should report to the disinterested quorum what he had learned as a result of this. And if the disinterested quorum wished to retain Judge Fuld, that was up to them. If they didn't, that was also up to them.

Q Did anybody at this board meeting, or did anybody at any time, raise the question of whether or not Anchor or any of the individual defendants should pay, in whole or in part, for the so-called special counsel?

A That question was never raised.

Q Did any of the disinterested quorum ever express any interest in how much this was costing the fund?

A I was not privy to the discussions of the disinterested quorum.

Q Whether you were privy to the discussions is not the question. The question is, to your knowledge, did any of the disinterested directors ever express any interest in how much this was costing the fund?

MR. POLLACK: Did they ever ask Mr. Haire, is that your question?

MR. TERSIGNI: No, my question is to his knowledge, did they ever express any interest in that subject.

MR. POLLACK: I object to the form of the question. Please, that is an absolutely misleading question. Obviously they had meetings at which Mr. Haire was not present, in which the subject may very well have been discussed.

MR. TERSIGNI: Mr. Haire may have knowledge, he may have hearsay knowledge, all of which is discoverable.

MR. POLLACK: Do you have any hearsay knowledge?

MR. TERSIGNI: Does he have any knowledge.

A I have no knowledge, hearsay or otherwise, with regard to the deliberations of the disinterested quorum.

MR. TERSIGNI: Can't he just answer the question?

MR. POLLACK: I think he has just done it.

MR. TERSIGNI: I think we could have done without that objection.

Q Did you ever discuss with Mr. Wickers, when you instructed him to make inquiries as to the availability of these eminent counsel, who should pay for it?

A Until you raised the question a minute ago, the thought of anyone other than Fundamental paying for their special counsel on this issue was the furthest thing from my mind, and I still find it a very shocking suggestion, frankly, because it seems to me it would run the risk of compromising counsel.

Q It would run the risk of compromising counsel? Would you explain what you mean by that?

MR. POLLACK: Mr. Tersigni --

A Special counsel retained to advise five disinterested directors as to whether they should sue Anchor, and you are suggesting that special counsel ought to be paid by Anchor.

Q You just said that in your opinion it might compromise counsel. In your mind, would there be anything improper about Anchor's reimbursing the fund for legal fees incurred in this connection?

MR. POLLACK: I think this line of inquiry has gone far enough. I am going to instruct him not to answer any further questions. I think the witness made the point perfectly clear, that the idea never occurred to him, and he thinks it was a totally inappropriate idea since the retention was by Fundamental.

MR. TERSIGNI: I am trying to find out why he felt that. He is the president of this fund --

MR. POLLACK: Please move on to your next subject.

MR. TERSIGNI: No, I am not going to move on to anything because you say so. You can direct your client not to answer, but don't direct me as to what subject to move on to.

MR. POLLACK: Please pose your next

question.

Q Has a bill been submitted for legal services by special counsel in this connection?

A It has been submitted ~~by~~ TO Fundamental Investors.

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Q Did you approve that bill as president of the fund?

of the fund?

A No, I did not.

Q Were you aware of it?

A The bill was rendered to and approved by the disinterested quorum.

Q How did you find out about it?

A It was paid by the treasurer of the fund.

Q That was your first knowledge?

A That's correct, after it was paid.

Q When was it approved by the disinterested quorum?

A I have no idea.

Q When did you find out about it?

A I can't pinpoint the date when I found out about it. I don't know.

Q How much was the bill for?

A I have never seen the bill, but I believe it was $40,000.

Q Were there disbursements included?

A I have no idea.

Q Over and above that?

A I have not seen the bill. You will have to ask someone who did.

Q At any rate, no one ever came to you from the disinterested quorum and suggested that you defray or reimburse the fund for all or part of that expense?

A That is correct.

Q Had they made that suggestion, you would have responded how, that it was not appropriate?

MR. POLLACK: I object to the question as not appropriate and as counter to to the facts. I instruct him not to answer.

(Continued on the following page.)

Q Mr. Haire, at the July 24, 1974 directors' meeting, did you make any statements on the subject of whether or not the board should authorize the five unaffiliated directors to make the decision they made?

A I don't recall that I did. I don't believe I participated significantly in the discussion at all.

Q Did anybody speak in favor of such a proposal?

A Such a proposal being what?

Q To authorize the so-called disinterested directors to decide whether or not Anchor and yourself and the other defendants should be sued, or whether the Lasker case should be permitted to continue, and so forth.

A I think that the discussion tracked along the analysis that I indicated earlier, namely, that there was a report on the settlement of the Goldman, Sachs litigation. The board was reminded that the Lasker case existed, and that a decision as to what position, if any, the fund should take vis-a-vis Lasker had to be made, and that since certain of the members of the board were named defendants in the Lasker case, the appropriate parties to make that decision for Fundamental were those directors who were not defendants, namely, a disinterested quorum.

Q Mr. Haire, my questionwas who spoke in favor of the proposal. Was it you?

A I did not speak on the subject.

Q Who else was present? Was Mr. Burr there?

A I presume so.

Q Do you recall Mr. Burr saying this is what ought to be done, so forth and so on?

A None of the affiliated directors --

Q Just answer my question, sir, please.

A No, he did not.

Q Do you recall Mr. Hutchinson saying, "Gentlemen, this is what ought to be done," so forth and so on?

A No.

Q He was interested, too; is that correct?

A That's correct.

Q Mr. Kemmerer, did he stand up and urge the board to vote to delegate this to the five-man minority?

A No.

Q Mr. Kendall was one of the five so-called disinterested.

Mr. Phillips, he is a defendant. Did he stand up and say that this ought to be done?

A No.

Q Did Mr. Martin, the president, is he, of Anchor, stand up and say this ought to be done?

A No.

Q Who did? Who stood up and suggested to the board that this be done?

A No one stood up and suggested anything. Mr. Wickers reported on the settlement of the Goldman, Sachs litigation, reminding the board that they had indicated in the stay papers in Lasker that a decision would be reached subsequently, called to the attention of the board the fact that certain directors then on the board were named defendants in the Lasker case, suggested that there was a disinterested quorum who were not defendants, who could act for the fund, suggested that if that disinterested quorum wished to function for the fund they might wish to consider the retention of special counsel, and indicated that Judge Fuld was available.

Q This was Mr. Wickers?

A That's correct.

Q And after Mr. Wickers spoke, did Mr. Burr vote in favor of doing it?

A No, none of the affiliated directors or the named defendants voted at all.

MR. POLLACK: Please, let him finish his answer.

Q Are you finished?

A My answer was that neither Mr. Burr, nor any of the other affiliated directors, nor Drs. Kemmerer or Phillips, who were named defendants, voted on the matter at all.

Q Who voted for this?

A The five members of the board who represented a disinterested quorum agreed, on behalf of the board, to accept this responsibility.

Q In other words, they authorized themselves to make this decision; is that it?

A I would say ~~so~~ THAT THEY AGREED TO ACCEPT THIS RESPONSIBILITY ON BEHALF OF THE BOARD.

Q Did you discuss with counsel whether the five people could delegate to themselves the authority to make this decision?

MR. SOUTHER: Objection.

MR. POLLACK: Objection. I don't think the witness testified that the five people delegated to themselves.

Q Who voted in favor of this proposal.

MR. POLLACK: The minutes show that.

MR. TERSIGNI: No, I'm sorry, sir, the minutes don't. And if they do, I would like to see it.

It says the board authorized. I would like to know who that was. Maybe it was Mr. Wickers.

MR. POLLACK: Were there any objections by any members of the board to the five acting for the board?

MR. TERSIGNI: That's not the question, Mr. Pollack. The question is who authorized these five people to make this decision.

MR. POLLACK: I think you are tied up in semantics. The minutes clearly reflect the fact that the board made that determination.

Q The board made that determination?

A That's what the minutes say.

Q Did you vote for it? Did you vote for it?

A I would have thought not.

Q Did Mr. Burr vote for it?

A I can't answer your question.

Q Did Mr. Hutchinson vote for it?

A I don't know.

Q Didn't you testify just a moment ago that none of the interested directors took any part in all of this?

A I testified they did not take part in the discussion.

Q And that they didn't vote for this?

A It was my impression. If the minutes say to the contrary, I might be wrong.

Q The minutes don't say to the contrary, Mr. Haire. That's my problem.

Who voted for this, the interested directors or the disinterested directors?

A I cannot answer your question.

Q Did Mr. Wickers vote?

A No, of course not. He's not a member of the board.

Q Did he give advice as to what the board ought to do?

A I've already reported on what Mr. Wickers reported.

Q Do you have any recollection, at the end of the discussion, of somebody making a resolution and a vote being taken, hands being raised?

A No, I do not have any such recollection.

Q Was a vote taken?

A I said I do not recall.

Q Who would know whether this was voted on?

A Well, ~~we~~ YOU will just have to ask other members of the board and see whether their recollection is better than mine. 9

Q Who prepared these minutes, do you know? My copy is unsigned. The secretary?

A Yes.

Q Who is that, Mr. Wickers?

A No, I think it was Mr. Little. ~~But I'd have to..~~.

Q It says, "Mr. Wickers acted as secretary to the meeting."

Is that in accord with your recollection?

A I have no recollection, no.

MR. TERSIGNI: We got these minutes or extracts, I guess, from Mr. Souther.

May we have these marked for identification.

(Minutes of meeting of the board of directors of Fundamental Investors, Inc., held July 24, 1974, marked as Plaintiffs' Exhibit 12 for identification, as of this date.)

MR. TERSIGNI: For the record, Exhibit 12

421A

for identification is an unsigned copy of minutes with pages 2 and 3 partially blank. I assume that they were masked, Mr. Souther. And 4 seems to be partially blank. And 5 is blank. And there is a signature line for the secretary, and then secretary pro tem. But my copy is unsigned. I assume that these are true and accurate minutes of the July 24th meeting.

My question is, can we have an agreement to that effect?

MR. SOUTHER: I would not have produced them to you --

MR. TERSIGNI: That's why I --

MR. SOUTHER: Could I finish my answer?

I could not have produced them to you if I was not informed and did not believe that they were true extracts of the minutes.

MR. TERSIGNI: I make that assumption, and that's why I am saying we can proceed on that assumption, that they are true and accurate.

Q Who authorized the retention of Judge Fuld?

A The disinterested quorum.

Q And that was at this meeting?

A I don't know when it was.

Q Do you recall any of the five voting on any question at that meeting, either saying yes, or no, or raising their hands, and so forth? Do you have any recollection of that?

A No.

Q Do you have any recollection of any vote whatsoever being taken at that meeting?

A I don't have any specific clear recollection.

Q Have you reviewed these minutes at any time since July 24, 1974? I am referring to Exhibit 12 for identification.

A No, I have not.

Q Subsequent to July 24, 1974, there were certain meetings by the five directors that have been characterized as the so-called disinterested quorum. Correct, sir?

A That's what I understand.

Q You were aware that these meetings were taking place, were you not?

A I certainly was aware of some of them. Whether I was aware of all of them, I don't know.

Q How did you become aware of them?

A At one I was invited to appear and answer questions.

Q That was the December 18th meeting?

A That's correct.

Q With respect to others, how did you hear about them?

A Well, if I heard about them at all, I guess I would have heard about them from Mr. Wickers.

Q What did he tell you about what was happening?

A Well, he didn't know what was happening either, except that they were working, because he was asked from time to time to supply material.

Q When you left the board meeting on July 24, 1974, what was your understanding with respect to when the five directors would do their thing, as it were?

A I had no understanding. The decision had been made by them that they would take on this responsibility, and they proceeded totally on their own, without consultation WITH ME.

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Q Did you assume it would take a year, six months?

A I had no assumption at all. It would take as long as they wanted to take.

Q Did you ever ask anyone how long is this going to take?

A It was none of my business.

Q Did you ever make any inquiries about how much more do we have to wait before we make a decision?

A No. I totally isolated myself from the whole proceeding.

Q Subsequent to July '74 the regular board of directors' meetings took place, did they not?

A They did.

Q And they were attended by Mr. Kendall, Miss Robichaud, Mrs. O'Connor, Mr. Stephens and Mr. Laun; correct?

A Right.

Q You didn't avoid them, did you?

A No.

Q I mean, you spoke to them?

A Certainly.

Q You carried on your normal functions, and so on and so forth?

A I did.

Q And you did that in July, and in August, and in September; is that right?

A There was no August meeting.

Q October, November, December, and in January;

correct?

A Well, except in December, December was the date of the meeting of the disinterested quorum that I attended.

Q And December --

MR. POLLACK: Please, let him finish.

December was?

THE WITNESS: The date of the meeting of the disinterested quorum at which I was asked to appear.

Q That was December 18th; correct?

A That's correct.

Q At each of the months which I mentioned where there was the usual series of director meetings of the Anchor fund, was there ever any discussion about what the committee was doing, when it might make its decision, so on and so forth?

A Not unless the minutes of the board meeting reflect it.

Q Nothing was ever said that is not in the board minutes?

A No.

Q Are the board minutes complete and in detail?

MR. POLLACK: Mr. Tersigni, how can this witness possibly answer a question like that about a series of minutes? If you want to ask, show him any specific set of minutes --

MR. TERSIGNI: He just did.

THE WITNESS: As far as I know, they are complete.

Q You don't recall any discussion with any of these five people, either before the directors' meeting, or during lunch, or after the directors' meeting, so on and so forth, where in any degree at all reference was made to when there might be a decision or what was happening, and so on?

A I had absolutely no discussion with any of the five from July until I was called before the meeting on December the 18th on this subject, nor did I have any thereafter.

Q When did you first find out that the five-member quorum had made a decision?

A When it was reported to the board.

Q It was made on January the 6th, 1975.

A I did not learn of it until it was reported to the board on whatever date that was, later in January.

Q Nobody came to you and said, "We have decided that we should move to dismiss the Lasker case"?

A No.

Q In January you knew that under the advisory contract that would expire on May 1, 1975, you had the right to terminate no later than March 1st?

A May 1st.

Q You had to give notice by March 1st, though, didn't you?

A We would have.

Q In other words, if you wanted to terminate, it would have been incumbent upon you to notify the board in writing no later than approximately March 1st?

A That's correct.

Q In January 1975, as of that date, had you given any thought to how this five-member minority might decide?

A I knew they had three alternatives.

Q How did you know that?

A I'm an attorney, Mr. Tersigni, and an analysis indicates they can either do nothing or do something on one side or the other.

Q Are you referring to the three alternatives that Judge Fuld discussed at some length?

A I haven't seen what Judge Fuld did.

Q In other words, these three alternatives that you have just mentioned, that's not the result of reading Judge Fuld's --

A There are only three alternatives. They can either let the Lasker case proceed on its own, they can decide to try to take it over, or they can decide that they don't think it can go forward. If you can suggest more than that, I would like to hear what they are.

Q In that order, sir?

MR. POLLACK: I object to it.

A I don't recall the order I just stated them in.

Q Is it your testimony you have never read Judge Fuld's opinions?

A No, I have not.

Q You have not?

A I have not.

Q Have you seen the motion papers in this case, that were filed in your name?

MR. SOUTHER: I object to that.

MR. TERSIGNI: What is the objection?

MR. SOUTHER: I don't think they were filed in his name.

MR. TERSIGNI: It said all the defendants joined in the motion.

MR. SOUTHER: The fund made the motion, and they were not made in the name of Mr. Haire.

MR. TERSIGNI: No, I said has he seen the motion papers filed in his name.

A I haven't seen the whole pile of papers.

Q I know there was a motion filed in the name of Mr. Haire. I am not saying you filed it, Mr. Souther. Obviously Mr. Pollack filed it.

MR. POLLACK: To the contrary, Mr. Souther filed the motion.

THE WITNESS: I have not read Judge Fuld's opinion. If it was appended to a pile of documents that was filed with a piece of paper that has my name on it, so be it, but I have not read it. I might have had access to it, but I have not read it.

MR. SOUTHER: I simply wanted to point out, Mr. Tersigni, that the motion was made by the fund and by my firm on behalf of the fund, and joining in that motion were two other law firms, representing the other defendants in the case. But the motion was not made -- it's a small technical point, but accuracy is important, the motion was not made by us in his name.

MR. TERSIGNI: I didn't say that it was. I said you moved in the name of the fund -- I said there was a motion filed in Mr. Haire's name.

MR. SOUTHER: No, it wasn't.

MR. TERSIGNI: Wait a minute. What was actually done was that you, Mr. Souther, prepared, I take it, a notice of motion, moving to dismiss. And on the second page there was typed as follows: "Joining in this motion," and then Dewey, Ballantine signed on behalf of Burks, et al., and Pollack and Singer signed on behalf of Anchor, Burr, Chalker, Haire and Hutchinson.

If that's not making a motion in Mr. Haire's name, then I stand corrected.

Q The point is before this motion was filed, in which your lawyer says you were joined, did you have occasion to review or be aware of what was submitted to the Court in your name?

A I just stated, perhaps you didn't hear my response, that I may have had access to that document, but I did not read everything that's attached thereto, and I haven't read Judge Fuld's memorandum. I may have had access to it.

Q Did you read any of the other documentary material that was being submitted on your behalf?

A If I signed a specific document, I read it. But I don't even know what documents you have there.

Q For example, the minutes of the quorum, a letter that Mr. Stephens had written --

A No, I have not read that.

Q This is the first time you have ever seen these documents?

MR. SOUTHER: He didn't say that.

A I didn't say that. I said I haven't read them.

Q You saw them but you didn't read them?

A That's what I just testified to.

Q What occasion did you have to see them but not read them, and how do you know you saw them?

MR. POLLACK: Isn't it fairly clear that --

MR. TERSIGNI: No, it's not fairly clear.

MR. POLLACK: It's fairly clear that Mr. Wickers, as the man in this company charged with the responsibility for legal matters, probably went to the chief executive and said, "Here, Mr. Haire, there are some papers, and do you want to look at them?"

Perhaps you can testify on this issue.

MR. TERSIGNI: I would like him to explain how he knows he saw them if he never read them.

MR. POLLACK: I think it's perfectly evident.

Q Would you tell us, Mr. Haire? How do you know you have seen these papers if you never read them?

A I said, if you read the record, that I may have had access to them but I never read them. I cannot swear under oath that I have seen that one inch thick pile of papers. I've seen so many inch thick piles of papers since this litigation started, how do I know which ones I've seen and which ones I haven't? What point are you trying to make out of this?

I state to you that I haven't read them. Whether I've seen them or not, who knows? I have had access to them.

Q We had reached the point where I asked you as of January '75 did you give any thought as to how the committee might decide, and you said they had three options. Do you recall that, sir?

A Correct.

Q What did you think the committee would do?

MR. POLLACK: Of what relevance is that? I object.

MR. TERSIGNI: I think it's very relevant.

MR. POLLACK: What is the relevance?

MR. TERSIGNI: For example, if he thought there was no way in the world that they were going to authorize a suit against him, I think that would have a bearing of whether or not the five people were independent. If he didn't believe they would sue him, I think that certainly has bearing on the independence of the directors.

MR. POLLACK: It could also have bearing on his view of the merits of the case against Anchor.

MR. TERSIGNI: Maybe, but I would like to hear that from the witness, not from counsel.

MR. POLLACK: Did you have any view one way or another as to what conclusion they would reach?

THE WITNESS: I certainly had no reason to exclude any of the three possibilities that the disinterested quorum could reach, nor did I exclude any of those possibilities.

Q I am not asking you what you excluded nor what you had reason to believe. Did you have any opinion, any belief, as to what the committee would probably decide?

A Of the three conclusions, if I had a belief, my best guess would have been they probably would have done nothing.

Q In other words, just permit the action to continue?

A That's correct.

Q Why did you believe that?

A Because it's an easy decision to make.

Q Did you believe that that decision would be the decision which would have been in the best interests of the fund? Is that why you believed that?

MR. SOUTHER: I object to the form of the question.

Q You may answer.

A I believe that the decision that they made was in the best interests of the fund.

Q I am asking you, sir, when you testify that you believed that if you had to pick they would have simply permitted this action to proceed, did you believe that that action was in the best interests of the fund, at the time you believed that's what they were going to do?

A I already stated that the decision they did reach was in the best interests of the fund, so obviously the one I thought they would reach was not in the best interests of the fund.

Q Did you believe at the time that they would not do something in the best interests of the fund?

MR. POLLACK: Mr. Tersigni, please, isn't this chop logic? You are asking him to speculate --

MR. TERSIGNI: No, he said he had an opinion.

MR. SOUTHER: No, he said if he had any opinion.

MR. TERSIGNI: He said he had an opinion.

MR. POLLACK: He did not so say.

MR. FRIEDMAN: He said he didn't exclude any of the possibilities.

MR. POLLACK: Really, why play the semantic game here? Why don't you ask him what he did, what he said, what he heard, and so forth? Let's get down to the evidentiary matter here.

MR. TERSIGNI: Don't you think the witness' belief at the time is evidence here?

MR. POLLACK: I think it's of no consequence here whatsoever, none.

MR. TERSIGNI: We disagree.

Q Did you give any consideration to what, if anything, you would do, Mr. Haire, if the directors decided to take over the suit and prosecute it against Anchor and yourself?

A I think that fell into the category of let's cross bridges as we come to them.

Q Certainly you recognized that as one of the three possibilities?

A I said that.

Q And you certainly recognized what a substantial effect, financially, this would have had on Anchor's income?

A I didn't believe it would have any effect on Anchor's income.

Q It would have had no effect if they had taken over the action?

A That's correct.

Q Suppose they had taken over the action and terminated your contract.

A I've already testified this morning that that thought did not occur to me.

Q You saw nothing inconsistent about their taking over the case and suing you and continuing with you as their advisor?

A I stated that.

Q And if the directors believed that they could not, as a practical matter, take over the suit, or permit it to continue, without terminating you, would you believe that they were wrong in that belief?

A I certainly would.

Q Did any of the so-called disinterested directors subsequently tell you what reasons they had for voting in favor of seeking dismissal of this case?

A I've never had any discussion on this subject with any one of them.

Q Didn't anybody, since January 6, 1975, tell you that these directors believed that they could not take over this action or permit it to continue without terminating you as an advisor? Hasn't anybody told you that they believe that and that that was part of their decision?

A Nobody has told me that. I have read that.

Q Where have you read that?

A In the document that was filed, the affidavit of Leon Kendall.

Q That was part of the motion?

A That's correct.

Q When did you read that?

A I don't recall when I read it. Somewhere around the time it was filed.

Q Do you recall a few minutes ago saying that you never recall seeing any of the exhibits to --

A I didn't say that. I said I had not read Judge Fuld's opinion, although I had access to it. I did not say that I had not read Leon Kendall's affidavit. You never asked me that question.

Q No, but I did call to your attention there were certain exhibits to Mr. Kendall's affidavit, of which two were the opinions of Judge Fuld, and I told you that the minutes were also there, and I told you that Mr. Stephens' letter was also there.

Do you recall my asking you about those exhibits?

A You have never mentioned Mr. Stephens' letter until this very moment. I had never read Mr. Stephens' letter.

Q Let me understand. You are saying that you did read Mr. Kendall's affidavit?

A That's correct.

Q But you didn't read any of the exhibits?

A I didn't say I didn't read any of the exhibits. I don't even know what the exhibits are.

Q Here is Mr. Kendall's affidavit. Tell me which exhibits you read.

A When?

Q Whenever you read the affidavit.

MR. POLLACK: Of what relevance is this, Mr. Tersigni, to the relationship of the minority directors and the qualifications committee?

MR. TERSIGNI: It will become apparent.

MR. POLLACK: Unless you can state the relevance, I am going to direct him not to answer. This witness is not here to testify about his impression of legal documents.

MR. TERSIGNI: Fine. You have directed him not to answer most of my questions, and you are being quite consistent.

Q Mr. Haire, did you read Mr. Kendall's affidavit at or about the time that the motion to dismiss was filed?

A I have just testified to that.

Q That was on January 28th, on or about. Do you see that date?

A Yes.

Q When you read his affidavit, did you go back to the disinterested, so-called disinterested directors, and say, "Hey, you made a mistake, there's no reason why we can't continue as your advisor even if you take over this suit"? Did you go back and tell them that?

A Of course not.

Q Why not? Did you read Mr. Kendall's affidavit, where he said that was much of their thinking in moving to dismiss this case?

MR. SOUTHER: I object to that.

MR. POLLACK: I object to the form of the question. That's a misstatement of the affidavit.

(Continued on next page.)

Q Did you read his discussion of that thinking in his affidavit, where he said that?

MR. POLLACK: Mr. Tersigni, this is not an interrogation of Mr. Haire as to the viewpoints of Mr. Kendall. Ask Mr. Kendall about those questions. Let's get to what Mr. Haire knew, did, said.

MR. TERSIGNI: That's what I am asking.

MR. POLLACK: At relevant times. The decision had been made at that point, Mr. Tersigni.

MR. TERSIGNI: I assume the decision could have been unmade on January 28th, unless you are saying that the so-called disinterested directors were irrevocably estopped, Mr. Pollack.

MR. POLLACK: Please put your next question.

Q My next question is, did you go back to the directors and point out to them that this was not correct?

A Would you read to me what you are talking about?

Q Let me read to you from page 10 of

Mr. Kendall's affidavit, subparagraph (c):

"If the action were to proceed against Anchor with the acquiescence or under the control of Fundamental, the adversary relationship that would be created between Fundamental and Anchor, and the attendant serious distraction of Anchor's personnel from their efforts on behalf of the shareholders of Fundamental, would leave us no practical alternative but to remove Anchor as investment advisor and to seekto retain a new investment advisor. This would necessarily result in delay, uncertainty, and an inevitable lapse in the management of Fundamental's affairs, to the serious detriment of its shareholders."

Do you agree with that?

A It's not my position to agree with it or not. The five disinterested directors reached that conclusion.

Q You knew it wasn't true, didn't you?

MR. FRIEDMAN: I object to that characterization.

A What do you mean, it isn't true? That's their opinion.

Q Do you agree that that would have been required? Do you, sir?

A I would have argued that it would not have been. But if the five of them had reached that conclusion and held to it, my argument would have been rather unavailing.

Q You are president of this fund, aren't you?

A I am.

Q As such, you have the best interests of the shareholders very much uppermost in your mind?

A I certainly do.

Q And you wanted to be sure that these five individuals made the best decision for the shareholders of the fund, didn't you?

A Yes, I did.

Q Did it ever occur to you, when you read what I just read to you, to go to them and say if your decision not to sue me or Anchor is based on the belief that such a decision would require my termination, I want you to know that that's not correct, in my opinion, that we can continue to give meaningful and proper service to the fund, regardless of whether you decide to sue us or not, did you ever go back and tell them that?

A I've already testified that I did not.

Q Why not? Didn't you feel that that was something they ought to know in order to make the best decision for the shareholders?

A They had already made the decision.

Q And it was unalterable, as far as you were concerned; is that right?

A I wasn't going to meddle in their decision. I hadn't meddled in IT AND I HAD NO INTENTION OF MEDDLING IN IT. 9

Q Why not?

MR. SOUTHER: Let him finish.

MR. POLLACK: Mr. Tersigni, I remind you that there is no jury here. Would you sit back and stay calm, please.

MR. TERSIGNI: I am very calm.

MR. POLLACK: No, you are not. You are up and shouting. I think you are losing control.

MR. TERSIGNI: I think I am very much in control. Very much in control.

Q Go ahead, sir.

A What's the question?

Q Didn't you feel you ought to go back and tell them that so they could make the most enlightened and best decision for the shareholders?

A I already testified that the decision had been made and I did not go back to them.

MR. POLLACK: The witness also testified that it was not his responsibility to make the decision or be part of the decision making process.

Q Did you agree with the decision?

A I told you that I believe the decision they made was in the best interests of the shareholders of the fund.

MR. POLLACK: Mr. Tersigni, it is 5:15. How long do you propose to continue?

MR. TERSIGNI: Not much longer.

Q Since they made their decision, have you had any discussion with any of the five directors about the decision or about the reasons for the decision?

A I've already testified the answer to that question is no.

MR. TERSIGNI: Gentlemen, subject to pursuing further discovery with this witness at such time as we may apply for rulings to the Court, I have no further questions at this time.

EXAMINATION BY MR. POLLACK:

Q Mr. Haire, I have a few questions for you.
Did you have any business relationship or professional relationship with Mr. Laun prior to the time that Mr. Laun became a director of Fundamental Investors?

A No, I did not.

Q Did you have any business relationship or professional relationship with Mrs. O'Connor prior to the time that Mrs. O'Connor became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Robichaud prior to the time that Dr. Robichaud became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Stephens prior to the time that Mr. Stephens became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Kendall prior to the time that Mr. Kendall became a director of Fundamental Investors?

A No, I did not.

Q To your knowledge, did anyone employed by Anchor have any business relationship or professional relationship with any of those five persons prior to the time that they became directors of Fundamental Investors?

A No.

Q Had you ever met Mr. Laun prior to the time that his name was placed before the directors' qualifications committee?

A I had not.

Q Had you ever met Dr. Robichaud prior to the time that her name was placed before the directors' qualifications committee?

A No.

Q Had you ever met Mr. Stephens prior to the time that his name was placed before the directors' qualifications committee?

A No.

Q Had you ever met Mrs. O'Connor, other than in civic affairs in Elizabeth, New Jersey, prior to the time that her name was placed before the directors' qualifications committee?

MR. TERSIGNI: Objection to the form of the question.

Q Mr. Haire, what was the extent of your knowledge of Mrs. O'Connor prior to the time that her name was placed before the directors' qualifications committee?

A I knew her as a prominent individual in the Elizabeth area in civic affairs, and I had also met her socially.

Q You had no economic relations of any kind with Mrs. O'Connor?

A None.

Q Mr. Haire, what was the extent of your knowledge of Mr. Kendall prior to the time that his name was placed before the directors' qualifications committee?

A As I previously testified, I knew him in the securities business as a prominent individual in the securities industry. I knew him in civic affairs in the Elizabeth area where he lived. And I knew him socially.

Q Had you ever had any business or professional or economic relations with Mr. Kendall?

A No.

Q Other than in their capacity as directors, have you had any relationship with any of these five persons since they became directors?

A None.

Q At any time following the meeting of July 24, 1974, did you discuss with any of the five members of the disinterested quorum any deliberations or consideration that they were giving to the matter of what, if any, action they would take following the conclusion of the settlement with Goldman, Sachs, other than in the meeting of December 18, 1974?

MR. TERSIGNI: Before he answers that, could I have that reread, please?

(The pending question was read by the reporter.)

MR. POLLACK: I withdraw the question as framed.

MR. TERSIGNI: That's all right. I don't object to it.

MR. POLLACK: I understand. I am going to shorten it into several questions.

Q Mr. Haire, at any time subsequent to July 24, 1974, and prior to December 18, 1974, did you have any discussion with any member of the disinterested quorum regarding their deliberations?

A No.

MR. TERSIGNI: As a point of clarification, do these questions include any conversations he may have had with counsel about what the quorum was doing?

MR. POLLACK: No.

MR. TERSIGNI: You are talking about direct discussions --

MR. POLLACK: With the disinterested quorum.

MR. TERSIGNI: And you are excluding anything that he may have had to say with counsel?

MR. POLLACK: I am not excluding anything. I am merely asking him about his discussions with these five people.

MR. TERSIGNI: But you are not asking him whether he had any discussions with counsel --

MR. FRIEDMAN: He is not asking him if he had any discussions with his wife or the man in the moon.

MR. TERSIGNI: I just want to clarify it, because otherwise I am going to get right back into the attorney-client thing.

MR. POLLACK: Isn't it perfectly clear that I asked him if he discussed the deliberations of these five persons with these five persons, at any time between July 24th and December 18th?

A No, I have not.

Q Did you subsequent to December 18th have any discussion at any time with any of these five persons regarding their deliberations?

A Never.

Q Your discussion with these five persons on December 18th was as a result of being summoned to appear before them at a meeting; is that correct?

A That's correct.

MR. TERSIGNI: Objection to the form of the question.

Q Mr. Haire, in summarizing that point, would it be fair to say that other than as an invitee to the meeting of December 18, 1974, you took no part whatsoever in the deliberations of the disinterested quorum?

A Absolutely.

MR. TERSIGNI: Objection to the form of the

question.

MR. POLLACK: You may answer.

A That is absolutely correct.

Q Did the directors' qualifications committee have occasion to consider candidates for the board of directors, other than those who were ultimately selected?

A Yes.

MR. TERSIGNI: He already testified. He said Taylor was selected.

Q Other than Mr. Taylor, did the directors' qualifications committee review other nominees?

A Yes.

Q Numerous such persons?

A Numerous.

Q You testified that the recommendations to the board of directors by the directors' qualifications committee with respect to these five persons were unanimous.

Was the directors' qualifications committee unanimous with respect to their viewpoints of all of the many other candidates that were proposed as possible people for consideration by the directors' qualifications committee?

A I would think so, yes.

Q In other words, with respect to the numerous persons that were not selected as directors, there was always unanimity as to the viewpoint --

MR. TERSIGNI: It's asked and answered. He said yes.

Q Do you understand the question, Mr. Haire?

MR. TERSIGNI: I'm sure he does. It's been asked and answered.

A The problem is there were a great many people who were candidates over a period of years we are talking about, and I don't recall any situations where there was a division of opinion.

Usually if someone were considered, AND there was some objection, such as that they were in a business that was competitive, or that they were, in the case I can think of, connected with an REIT, and we weren't sure that was the sort of dual directorship that was desirable. It was this sort of thing.

Things were never taken to a vote, but there was general agreement that that objection seemed to be a good one, and so it was never pursued, AND THE PERSON INVOLVED WOULD NOT BE RECOMMENDED TO THE BOARD AS A CANDIDATE FOR DIRECTOR 9

Q Did you have any personal acquaintance with

Mr. Hopkins prior to the time that you commenced service with Anchor and Fundamental?

A No, I never met Mr. Hopkins before he came on the board.

Q Did you have any prior acquaintance with Dr. Kemmerer prior to the time that you became associated with Anchor and Fundamental?

A None.

Q Did you have any prior acquaintance with Dr. Phillips prior to the time that you became associated with Anchor and Fundamental, or prior to the time he came on the board?

A I had none.

Q Did you ever have any business or professional relationship of any kind with Dr. Phillips, Dr. Kemmerer or Mr. Hopkins?

A None.

MR. TERSIGNI: Wait a minute. Are you talking about prior to -- you have been asking about prior to the time they came on the board.

THE WITNESS: Other than their service as a director of the fund.

MR. TERSIGNI: Obviously he had a relationship with them when they were on the board together.

BY MR. POLLACK:

Q Other than the relationship you had by virtue of the fact that they were directors, did you have any business or professional relationship with any of these three?

A No, I did not.

MR. TERSIGNI: Are you through?

MR. POLLACK: I would like to take just a moment.

MR. TERSIGNI: I have very brief questions on one point that you raised.

MR. POLLACK: Go ahead.

MR. TERSIGNI: Do you want me to do that now?

MR. POLLACK: Yes.

BY MR. TERSIGNI:

Q Mr. Haire, I believe you testified in response to Mr. Pollack that there were numerous other persons which were considered by the qualifications committee, other than the six that I discussed with you who were eventually recommended and elected. Is that correct?

A That's correct.

Q Other than the six that were eventually recommended and elected, did the qualifications committee recommend any other person for a seat on the board?

A No.

Q In other words, all these other numerous people that were considered were all unanimously rejected; is that right?

MR. POLLACK: I object to the form of the question. The mere fact that they were not nominated doesn't mean that they were rejected. Others were suggested in their superior stead.

Q Was there anyone else that was recommended by the qualifications committee for nomination?

A I've already testified no.

Q So you rejected them, you didn't recommend them?

A No, we didn't vote on them at all.

Q You didn't recommend them?

A Didn't recommend them, of course.

Q Out of all these numerous people, you only recommended six; correct?

A That's correct.

Q Can you estimate how many people you passed on whom you did not recommend?

A I wouldn't say we passed on them. A great many suggestions were made over the years by members of the board. I think you will find attached to the minutes of the directors' qualification a list of some twenty names of potential women candidates that we considered for the board.

If by selecting two women to serve on the board you are suggesting we unanimously rejected the rest of them, then I will accept that definition of rejection, but it's not mine.

Q The ones that you eventually recommended, and who were seated on the board, were persons recommended by members of the qualifications committee, like Mr. Burks, Mr. Phillips, yourself, and in the case of Miss Robichaud by an electee, Mrs. O'Connor; correct?

A They were all suggested by members of the board, either who were on the qualifications committee or who at the time were not, and so were all the others.

Q Wait a minute. Is that correct?

A Is what correct?

Q Mr. Laun was recommended by Mr. Phillips.

A That's right.

Q He was on the committee, wasn't he?

A Right.

Q On the qualifications committee?

A Correct.

Q Mrs. O'Connor was recommended by Mr. Burks. He was a charter member of that committee.

A Correct.

Q Mr. Kendall was recommended by Mr. Haire. Mr. Haire was on the committee, too.

A Correct.

Q Mr. --

MR. POLLACK: Mr. Tersigni, what is your point? This has been testified to at length.

MR. TERSIGNI: Just a minute.

Q Miss Robichaud was recommended by Mrs. O'Connor.

A Who was not a member of the committee.

Q But she was recommended by Mr. Burks; correct?

MR. POLLACK: Who is "she"?

MR. TERSIGNI: Mrs. O'Connor was recommended by Mr. Burks.

A I've already testified to that.

Q And the fifth member was Mr. Stephens; correct?

A That's right.

Q And he was recommended by Mr. Hopkins, who was on the qualifications committee; correct?

A That's right.

Q There isn't a single one of those persons who were eventually voted on the board that was recommended by any other director on that board, other than directors who sat on the qualifications committee; isn't that true?

A Well,by that brilliant line of reasoning, you couldn't ever have anybody else. I've just testified to that.

Q Mr. Haire, we are not here to spar. But my question is, is that true?

MR. POLLACK: I object to the characterization. The witness has answered the question. And I think that you are not --

MR. TERSIGNI: He hasn't answered it. He has given me an argument. I want to know is that true.

A It's true, as I have previously testified.

MR. TERSIGNI: I have no further questions.

BY MR. POLLACK:

Q Mr. Haire, what was the function of the directors' qualifications committee?

A Precisely to recommend candidates for the board.

And I think that my response indicates that they fulfilled their responsibility.

MR. TERSIGNI: One further question.

BY MR. TERSIGNI:

Q Were there recommendations made by members of the board not on the qualifications committee?

A Mrs. O'Connor proposed Miss Robichaud.

Q Other than that?

MR. POLLACK: At what point in time?

Q At any time, Mr. Haire, were there recommendations made by members of the board who were not members of the committee?

MR. POLLACK: Recommendations to who?

MR. FRIEDMAN: To the qualifications committee, to members of the qualifications committee?

MR. TERSIGNI: Are you directing him not to answer that question?

MR. POLLACK: No. We are just seeking a

clarification of what you mean by recommendations.

To whom?

MR. TERSIGNI: Mr. Pollack, it's totally irrelevant to whom they were made.

BY MR. TERSIGNI:

Q My question is, were there persons recommended for seats on the board by members of the board of directors who were not on the qualifications committee?

A There were persons recommended to the qualifications committee for consideration by other members of the board who were not on the committee.

Q Were any of those persons ever seated on the board of directors?

A Yes.

Q Who?

A Miss Robichaud.

Q Other than Miss Robichaud?

A I've already testified no.

Q And Miss Robichaud was recommended by Mrs. O'Connor?

MR. POLLACK: Please, I am not going to permit the witness to be put through this again, Mr. Tersigni.

MR. TERSIGNI: You direct him not to answer?

MR. POLLACK: I absolutely do.

MR. TERSIGNI: Fine.

I have no further questions.

MR. POLLACK: The question is in the transcript repetitively.

Let us repair for a minute.

(Brief recess taken.)

(Time noted: 5:45 p.m.)

John R Haire

JOHN R. HAIRE

Subscribed and sworn to before me
this 8th day of June 1976.

Florence G Dwyer

FLORENCE G. DWYER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires October 9, 1977

463A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-------------------------------------X

HOWARD M. LASKER, et ano., :

Plaintiffs, :

-against- :

HARRY G. BURKS, JR., et al., :

Defendants. :

-------------------------------------X

Deposition of LEON T. KENDALL, taken by the plaintiffs, pursuant to decision by the Court, at the offices of Seward & Kissel, Esqs., 63 Wall Street, New York, New York on February 26, 1976, at 9:10 a.m., before Rachel Bergin, a Shorthand Reporter and Notary Public within and for the State of New York.

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-and-
MARTIN I. KAMINSKY, ESQ.,

Of Counsel

oOo

IT IS HEREBY STIPULATED AND AGREED, by and between and among the attorneys for the respective parties herein, that the sealing, filing and certification of the within deposition be waived; that such deposition may be signed and sworn to before the officer before whom said deposition is taken.

IT IS FURTHER STIPULATED AND AGREED, that all objections, except as to form, are reserved to the time of trial.

LEON T. KENDALL,

called as a witness by the plaintiffs, having first been duly sworn by the Notary Public (Rachel Bergin) and stating his address as 7125 North Barnett Lane, Milwaukee, Wisconsin, was examined and testified as follows:

EXAMINATION BY

MR. TERSIGNI:

Q Mr. Kendall, would you state your profession for the record, please?

A. I am a professional economist and president of Mortgage Guaranty Insurance Corporation.

Q Do you serve as a director of any corporation other than Fundamental Investors and the other anchor funds?

A. I am a director of the company with which I am employed, Mortgage, M.G.I.C. Investment Corporation and a number of its subsidiaries.

Q How long have you been associated with Mortgage Guaranty?

A. Since April 1974.

Q Would you describe briefly for us your background prior to 1974?

A. Going back -- do you want it all or --

Q You might just indicate that very briefly.

A. All right.

Going back, I have a Bachelors Degree in St. Vincent College, Latrobe, L-a-t-r-o-b-e, Pennsylvania.

A Masters Degree, that was 1949.

1950, a Master of Business Administration, Indiana University.

A doctorate of Business Administration, Indiana University, 1956.

Employment: I was on faculty as a teaching associate in the School of Business, Indiana University, from 1950 to 1954.

U. S. Air Force, 1954-1956.

Economist, Federal Reserve Bank of Atlanta, 1956 to 1958.

Then economist for the United States Savings & Loan League, Chicago, 1958 to 1964.

Vice president and economist, New York Stock Exchange, 1964 to 1967.

President of the Association of Stock Exchange Firms, and then President of the Securities Industry Association, which resulted from a merger of that entity and that ran from 1967 to 1974, and now President, Mortgage Guaranty Insurance Company from 1974 to date.

Q Did you become a director of Mortgage Guaranty in 1974?

A. No. I was a director of Mortgage Guaranty in 1972.

Q Prior to that time, had you served as a director for any other company?

A. I was a director, prior to 1974?

MR. SOUTHER: Prior to 1972.

Q You said you became a director in '72.

A. Of M.G.I.C?

Q Right.

MR. SOUTHER: Do you understand the question?

Q I am asking you, prior to you becoming a director of M.G.I.C. in 1972, had you served as a director of any other company?

A. Yes. I was a director of First Federal Savings & Loan Association of New York prior, and then contemporaneously.

Q When did you become a director of that entity?

A. Approximately 1968.

Q. Had you served, or had any experience in serving as a director prior to 1968?

MR. SOUTHER: Are you asking about a business corporation, public corporation, private corporation, hospital boards?

MR. TERSIGNI: I think I asked him corporation. If he'd like to segregate them into public and private, that certainly is all right.

A. Other organizations of which I was a director is the National Association of Business Economists.

Q. Is that a not-for-profit organization?

A. Not for profit.

Q. Go ahead.

By the way, I assume that the other two entities you have mentioned, the Mortgage Guaranty Insurance Corporation and the other entity which you were a director. Would you repeat the name, please?

A. First Federal Savings & Loan Association, New York.

Q. I am assuming that those two

organizations were profitmaking organizations; is that correct?

A. Yes.

Q All right.

A. There is a Pingry School Board of Trustees; there is a hospital board, Elizabeth General Hospital.

Q Is that Elizabeth, New Jersey?

A. Yes, it is.

There is a -- I'm a trustee of the School of Business of Indiana University.

I think that is it. There may well be a number of others.

Q I don't mean to ask you to be necessarily all-inclusive, but to just give me your best recollection.

How long have you known Mr. John Haire?

A. Approximately ten years.

Q You met him approximately in 1966? Is that right?

MR. SOUTHER: That's ten years.

A. Yes.

Q Would you describe the circumstances under which you met him?

A. I don't believe I can describe the exact circumstances of the first meeting. My first -- my recollection, Mr. Haire was an officer, perhaps president, I am not sure, of a trade association for mutual funds. I was running the trade association for the New York Stock Exchange membered firms. There were any number of meetings which brought together all the trade associations and organizations of that industry, New York Stock Exchange, American Stock Exchange, Investment Bankers Association, et cetera.

Q. Investment Advisors?

A. Investment Bankers Association. Investment Advisors, I don't know that association. We were brought together in those instances.

Q. In what capacity was Mr. Haire acting in those meetings?

MR. SOUTHER: If you know.

A. I knew him as a representative of the Investment Company Institute.

Q. Is that the name of an entity?

A. Investment Company Institute is the trade association for the mutual fund companies.

Q. And Mr. Haire was the president, was

that your understanding?

MR. SOUTHER: He did not so testify.

Q What was your understanding as to what his --

A He was a representative of that group at these meetings, which simply were to bring together the industry.

Q And it was at these meetings that you met Mr. Haire?

A I would meet Mr. Haire at those meetings.

Q My question --

MR. SOUTHER: Let him finish the answer first.

A I cannot tell you whether that's the first time I met Mr. Haire.

Q Well, do you have any recollection of how you met Mr. Haire for the first time?

MR. SOUTHER: You mean other than what he has told you.

MR. TERSIGNI: I have asked the question. I think it's clear.

A When I was with the Stock Exchange, I would give a number of speeches on various subjects and there is a recollection I may well have met Mr.

Haire in the gathering after one of these speeches where people come up to the podium, et cetera.

Q Now, after you first met Mr. Haire, approximately ten years ago, how consistent were your contacts with him from that time?

MR. SOUTHER: I object to the form of the question.

Q You may answer.

MR. SOUTHER: It assumes facts that are not in evidence.

MR. TERSIGNI: This is not a trial. We are not putting facts into evidence.

MR. SOUTHER: Then don't put facts on the record that aren't there.

MR. TERSIGNI: I asked him how consistent his contacts with Mr. Haire were.

MR. SOUTHER: There was no evidence there were any contacts. That's the point.

BY MR. TERSIGNI:

Q Go ahead and answer the question, sir.

MR. TERSIGNI: I am sure he will tell us if there were none.

A. I don't understand the question.

Q If you don't understand the question,

say so.

Do you understand the question?

A. Would you please explain the question?

Q Let me rephrase it for you.

Subsequent to the time that you met Mr. Haire, did you have contacts with him from time to time?

A. Yes.

Q How frequently would you have those contacts?

A. The frequency would range from once in three to six months to some period once a month.

Q Were the contacts that you had with Mr. Haire, more direct as time went by or less frequent?

A. The frequency was variable, depending on business activities.

Q Over the ten-year period that you have indicated, can you tell us during what portion of that period you had frequent contacts with Mr. Haire?

MR. SOUTHER: Can you define "frequent"?

Q More than occasionally.

MR. SOUTHER: I don't understand that.

Q Do you understand?

A. No.

Q. You said that your contacts varied; during some periods it was once a month; is that right?

A. Yes.

Q. Was it ever more frequent then once a month?

A. Yes.

Q. How frequent did your contacts get at the time they were most frequent?

A. Perhaps twice a month, or there might have been a month where it was three times.

Q. Can you recall any period when it was more than three times a month?

A. Well, not specifically.

Q. Now, over the last ten years, can you identify during what period you may have had contacts with Mr. Haire three times a month, or on that order?

A. We would meet at board meetings of the Elizabeth Hospital.

Q. I take it Mr. Haire was a director and sat on the board of that hospital?

A. Yes.

Q When did you first take a seat on the hospital's board?

A I don't -- the exact year, I don't recall.

Q Can you approximate it?

A 1968, 1969. '68 or '69.

Q Was Mr. Haire already on the board when you became a director?

A Yes.

Q Did he have anything to do with your becoming a director?

A Not that I know of.

Q What were the circumstances under which you became a director?

A I was born in Elizabeth, New Jersey. This is my home. This hospital is the major medical facility in that community. I have always tried to serve civically. I was asked by a gentleman who I have known for many years, named Carton Stollard, and another gentleman I have known for over ten years, to consider going on this board.

Q Who was the other gentleman?

A He was the president of City Federal Savings & Loan.

MR. SOUTHER: We can fill that in.

MR. TERSIGNI: Let's leave a blank and you may fill in the name when you execute the transcript, Mr. Kendall.

A. (Insert) Everett Scherbourne

They invited me to be on this board.

Q. Have you completed your answer now?

A. Yes.

Q. When you took a seat on this board, you already knew Mr. Haire, correct?

A. Yes.

Q. Did you know that he was a director of this hospital?

MR. SOUTHER: When he went on the board?

MR. TERSIGNI: Yes, when he went on the board.

A. I am not sure whether I did or not.

Q. Did you discuss your going onto the board with Mr. Haire at any time? I am talking of the board of Elizabeth Hospital.

MR. SOUTHER: Prior to going on the board.

Q. At or about the time.

A. I cannot remember that I discussed it with Mr. Haire.

Q Do I understand you correctly that by virtue of you both being on this board you had contacts during this period that might have been as frequent as three times a month?

A. If there were committee meetings.

Q Did you work with Mr. Haire specifically in connection with your service on the hospital board?

MR. SOUTHER: Other than on the board? I object to the form of the question.

Q You may answer.

MR. SOUTHER: Do you understand?

THE WITNESS: I would like a clarification.

Q You both attended board meetings, correct?

A. Yes.

Q Did you both serve on committees?

A. Yes.

Q Did you both do things other than simply come to board meetings?

A. We came to committee meetings.

Q The answer is yes; is that right?

MR. SOUTHER: You answered the question.

Q What I am asking you is, other than attending board meetings, did you and Mr. Haire perform services together? Did you work on the same committee? Did you work on some project together? So on and so forth.

A. We worked on committees. We did not work on projects. We did not work in a special unique way for a hospital board.

Q Did Mr. Haire live in Elizabeth at the time?

A. He lived in Hillside.

Q Is that in the environments?

A. It's nearby. Same hospital zone.

Q Did you have occasion to visit Mr. Haire at any time at his home?

A. Yes.

Q Were you social friends?

A. We were more business friends than social friends.

Q We'll get to what you were more of. The question is, were you social friends?

A. Would you define "social friends"?

Q Doesn't that mean anything to you,

"social friends"?

A. It --

MR. SOUTHER: It could mean something to him and something else to you. That's why the man has asked you for your definition since it's your question he's attempting to respond to.

Q. My question is, does it have any connotation to you, sir?

A. There are gradations in social friends. Has Mr. Haire ever had dinner at my house? No.

Q. Do you consider him a social friend?

A. I consider Mr. Haire a friend. I might, by my definition; I do not consider him a social friend. We do not play golf, tennis, play bridge barbeque, socialize.

Q. What did you have occasion to do?

MR. SOUTHER: Have you finished your answer?

MR. TERSIGNI: Have you finished?

A. Yes.

Q. On those occasions when you visited Mr. Haire at your home, what were you doing?

A. Occasionally Mr. Haire would run rather large gatherings, Christmas parties. Would invite directors of the hospital, would invite neighbors of his, would invite other people, and we would be included.

Q When you say "we," are you referring to yourself and is there a Mrs. Kendall?

A Yes.

Q You both attended these functions, you and your wife?

A Yes.

Q Any other description you can give us of the functions that you attended at Mr. Haire's home?

MR. SOUTHER: I don't understand the question. He's just described the occasions under which he may have been at Mr. Haire's home.

MR. TERSIGNI: I am asking him whether he has given us a complete description or whether there were any other occasions he can describe.

MR. SOUTHER: If there aren't any, there aren't any. If there are, there are. It sounds as if you have exhausted the answer.

MR. TERSIGNI: It sounds to me like the witness is thinking, and I would like him to answer the question.

BY MR. TERSIGNI:

Q Just give me an answer.

A There may be another business type school situation where a group of people who are working on school boards would meet and meet at Mr. Haire's home.

Q Do you consider your friendship with Mr. Haire to be strictly business?

MR. SOUTHER: He has already answered that question. Yes.

MR. TERSIGNI: I don't think he has.

MR. SOUTHER: He has.

Q May I have an answer to the question, please?

MR. SOUTHER: This is all so extraneous. Don't strain over it.

A Primarily business.

Q Would you explain what you mean by that?

A When you are in a gathering with other human beings and it is not business hours and there are not business or civic subjects being discussed, or if you are at a dinner party with ten people and somebody else, another person is there, I don't regard that gathering as strictly business and, therefore, I cannot say to you strictly business. We do not meet at the Wall Street Club only. We meet in some doctor's home, who throws a bunch of people together, and the human condition says that's what it is. This relationship, by my definition, is not strictly business.

Q All right.

You became a director of Fundamental Investors in 1974; is that correct?

A. Correct.

Q During the period, from the time that you met Mr. Haire, in or about 1966, up to the time that you became a director of Fundamental in 1974, did you have any other relationships or contacts, whether business or business and social, with Mr. Haire, other than the contacts you have already described to us?

A. Mr. Haire was, not Mr. Haire, but this group of funds were a member of the Investment Bankers Association, trade association, which was merged into the trade association I headed, so at one point Mr. Haire's association, or company, or companies, were among the five or 600 members of the Securities Industries Association.

Mr. Haire may well have served on some committees along with 400 other or 500 other securities people, and so that's the relationship.

Q Did you have anything more specific to do with Mr. Haire by reason of his membership in this trade association, and your membership, as you have previously described it? In other words, did you work together on meetings? Did he attend lectures that you gave? Did you do things together? Did you have discussions, and so forth?

MR. SOUTHER: That's four different questions.

MR. TERSIGNI: I am simply illustrating the type of contact I am talking about. I think the wintess understands.

A. The Anchor group was a member. They were not particularly an active member. Representatives of that entity could attend any meeting that interested them. I assume they did. I have no recollection of any unique or special or unusual relationships with that association and my trade association.

Q During the period prior to 1974, when you became a director, were you acquainted with any other representative of the Anchor group other than Mr. Haire?

A. I may have met several of them in the course of the trade association work. I have no impression of who they are or were.

Q Have you now, to the best of your ability, described the contact and relationships that you had with Mr. Haire, and any other members of the Anchor group, during the period 1966 to 1974, when you became a director of Fundamental?

A. I think that's a reasonable description.

Q If you think of anything that you may want to include, you can furnish that to me as part of the transcript of your testimony at the time that you execute it.

When, specifically in 1974, did you become a director of Fundamental Investors?

A. I became a director in June of 1974.

Q How did you become a director?

MR. SOUTHER: You mean other than the

fact he was elected by the shareholders?

MR. TERSIGNI: Can he answer the question?

MR. SOUTHER: Is that what you mean?

A. The shareholders elected me. They elected me as director.

Q. Did you want to be a director?

A. Yes.

Q. Why?

A. Well, on my side, two reasons. I had spent ten years in the securities industry and I was leaving it. I felt that a tie to a company that was in that business was a, something that was important to me.

Number two, I grew up in Elizabeth, New Jersey. I have an aged mother and ill father. They were quite disturbed by my moving the kids to the midwest, and this provided, at least an occasional opportunity to let them know I was still alive and cared for them.

Q. Do you mean by that that you have occasion to coming back to the New Jersey area by reason --

A. From the board of directors.

Q And you would have opportunities to visit with them and that sort of thing?

A The board of directors meets in Elizabeth and by arranging your schedule, you can have lunch with your mother or something like that.

Q Right. I got it.

Q Why was it important to you, as you left the securities field to have, to maintain ties with a company in that field?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: He just testified it was important to him.

MR. SOUTHER: He said he wanted to maintain ties. I don't recall he said it was important to him.

MR. TERSIGNI: He said it was important to him, and I am asking him why.

BY MR. TERSIGNI:

Q If you didn't say that, please correct me.

A I believe a man should build some continuity into his business career, and as you move from one part, like securities, after ten hard years, to another part, like insurance, you shouldn't cut them all off.

Q And you gave thought to that --

A And --

Q I'm sorry.

A And in addition, I believe that you have something to give and you can give it through directorships.

I spent long years studying and working on the field of securities. This was an opportunity to give some of it back.

Q I take it you gave thought to this concept of continuity, as you were about to leave the securities field and go into the insurance field.

MR. SOUTHER: Object to the form of the question.

Q You may answer.

A Would you rephrase that?

Q Yes.

Did you give thought to this concept of continuity, which you have just described, as you were about to leave the securities field and go into your new field?

A Yes.

Q Did you review specific possibilities for your maintaining some relationship with the securities field?

A. Yes.

Q What were those specific possibilities, and I include in that question any specific companies that you may have given consideration to?

A. I was asked to be a director of ~~Payne~~ Paine Webber, Dean Witt~~n~~er, and a hint from Merrill Lynch. I did not want to choose among or between those companies. All very good friends, and do one and the others are annoyed.

The Anchor situation was unique in that Anchor doesn't compete with Merrill or Bache or Dean Witter, and, therefore, I did not have to make an election, which made a number of my very good friends a little disturbed that I went with a competitor.

It also, from my point of view, keeps the options open for the future, because in my new responsibilities they were such that going into a new field as executive officer of the world's largest mortgage insurance company, you knew you weren't going to have much time for outside activities.

These things take time and attention and care, and there was just no way -- all those are the factors I use in weigh~~t~~ing and thinking about this situation.

Q Did you give any consideration to any possibility that in the future you might get back into the securities field in some fashion or another?

A. I was going back into a field where I had spent a good number of years. I had been in the savings and loan and real estate field for six or seven years, so I was going, the movement to M.G.I.C. was a movement back, and I did not consider this as a -- my present position, as any kind of a temporary development, and then come back to the securities field.

I guess the answer is no. Sorry for the long answer.

Q Other than the possibility of establishing a relationship with the brokerage firm, is, that you have described as being competitors, and other than the Anchor situation, were there any other possibilities that were offered to you, or which you gave consideration to?

A. I was asked to remain a director of First Federal of New York, which is a, one of the largest savings and loan organizations in this state, in the country, I guess. Because there was a possible conflict, since my present company has them as customers, as well as their competitors, I elected to remove myself from that board and to not take that opportunity.

Q. Were there any other possible associations with the securities field that you gave consideration to, or which were offered to you at the time that you became the president of G.M.I.C.?

A. M.G.I.C.

Q. M.G.I.C.

A. There were hints from several other brokerage securities companies, and if you want me to name them, I don't know --

Q. Would you name just a few of them?

A. Oppenheimer --

Q. Would these be companies in the same category as the houses that you have already mentioned, like Merril Lynch and --

A. A little bit different. They're not public. They're institutional. They're not public.

Q Well, then name a few more of them for me, if you would.

A. Oppenheimer is the one I can think of.

Q Is that the only one you can think of at the moment?

A. I don't think we should name any others. I think we have made the point. ~~I don't want to get a lot of my friends -- never mind~~.

Q Were there any other possibilities that you considered or were offered?

A. No.

Q At the time that you were about to leave and to go and join M.G.I.C., did you, yourself, let it be known that you were interested in maintaining some association with the securities field?

A. No.

Q Do you know how these brokerage houses, and other entities you have mentioned, happened to to come to you and offer to make some association with you?

A. They -- I know how they came to me. They called or -- well -- I'll start over.

I was reasonably prominent in the securities industry, having served for ten years in this area, with a capacity to help these people think through their problems. As a professional economist, I have a reasonably good track record of forecasting and projecting future trends. I have a broad knowledge of people and circumstances and situations in the industry, regional firms, national firms, et cetera, and I think those things impress some people.

Q When did you first have any discussions with any representative of Anchor regarding the possibility of your establishing an association with the Anchor group?

MR. SOUTHER: I object to the form of the question. He's not associated with the Anchor group.

MR. TERSIGNI: Can we correct "association" to any relationship with the Anchor group?

MR. SOUTHER: It's Fundamental he's a director of, Mr. Tersigni.

MR. TERSIGNI: Are you telling me he's not a director of any other Anchor fund?

MR. SOUTHER: He's not part of the Anchor organization. He's a director of

Fundamental Investors. There are two separate entities.

MR. TERSIGNI: Are you meaning to represent to me he is not a director of any other Anchor fund?

MR. SOUTHER: That is not the question you asked.

MR. TERSIGNI: Let me rephrase it, because I think you are wasting time.

MR. SOUTHER: You can think whatever you wish.

BY MR. TERSIGNI:

Q When is the first time that you spoke with anybody, on behalf of Anchor, with respect to your establishing any kind of a relationship, either with the Anchor fund or with any of the individual funds comprising the Anchor group?

MR. SOUTHER: I object to the form of the question insofar as it's premised on him having a conversation with somebody from the Anchor organization.

MR. TERSIGNI: Are you directing him not to answer?

MR. SOUTHER: Did you hear me say that?

MR. TERSIGNI: No.
Are you directing him not to answer?

MR. SOUTHER: When I say it, I am sure he will hear me.

MR. TERSIGNI: All right.

A. Sometime in March of 1974.

Q. And did you have a discussion --

MR. SOUTHER: Have you answered the question satisfactorily.

A. Yes, it was in March of 1974.

Q. Did you have a discussion with someone at that time?

A. I can recall a phone call from Mr. Haire indicating, asking me whether I would have any interest in becoming a director of Fundamental Investors' fund

Q. Was that the first time that you heard from Mr. Haire, or anyone else associated with Anchor, on this subject?

MR.SOUTHER: Object to the form of the question.

A. Yes; to the best of my knowledge, yes.

Q. Have you told us, in substance, the entire conversation that you had with Mr. Haire at that time?

A. Essentially that's it. He asked me whether I would entertain the possibility, and that was about it.

Subsequently --

Q. Did you say anything?

A. I said I'd like to think about it, and asked him to send me some materials, which he did.

Q. Prior to receiving this telephone call from Mr. Haire in March of 1974, when was the last prior time that you had had any contact with him?

A. I have no idea.

Q. Did Mr. Haire say, in his phone conversation, that he knew that you were going with M.G.I.C.?

A. It was in all the newspapers.

Q. Did he say he knew about that?

A. Yes.

Q. Did he say how he knew it?

A. No.

Q. Did you receive the material you requested from Mr. Haire in this telephone conversation?

A. Yes.

Q. Approximately how long after the

conversation, did you receive the material?

A. I can't tell you that.

Q. Was it soon?

A. Yes, relatively soon.

Q. Do you recall what you asked for and what he sent you?

A. Reconstructing, I would say anything in terms of proxies and fund statements and anything else he thought I ought to have.

Q. When you received what he sent you, do you have a recollection of reviewing it?

A. It would be my practice to review it, yes.

Q. What, if anything, did you do after you reviewed it?

A. I don't think I did anything.

Q. What was your next contact with Mr. Haire on this subject?

A. I was asked whether I would be interested enough to meet with their Selection Committee. Director of the Selection Committee.

Q. Who asked you that?

A. Probably Mr. Haire.

Q. Was that in a phone call, too?

A. To the best of my knowledge, it would be a phone call.

Q. Did Mr. Haire make any statement to you as to whether he thought it would be good for you to become a director of Fundamental or any other Anchor fund?

A. Well --

Q. Did he make a pitch?

A. He may have described the Anchor fund or the Fundamental fund group. He may have described some of the other directors, but I cannot remember, as you say, a pitch.

Q. Did you have any discussion with Mr. Haire in which you stated your objective in maintaining some relationship with the securities field as you were about to move to M.G.I.C.?

A. Whether I specifically told Mr. Haire that, I can't be sure, but I am not going to tell you I didn't. I have no recollection of having done so.

Q. Did Mr. Haire tell you that he would like you to become a director of Fundamental Investors?

A. He said to me -- he did not say that. He said he would like me to meet the directors, ~~of the~~

Qualification Committee. I remember that, because ~~it was~~, he did not say, "Would you like to be a director?"

Q Was it your understanding that the discussion related to your becoming a director of one fund or all of the funds in the Anchor group?

MR. SOUTHER: Which discussion are you referring to, his conversation with Mr. Haire or his meeting with the director of the Qualification Committee?

MR. TERSIGNI: Mr. Haire.

A. It seemed to me we were talking about a ~~sequence~~ group of funds.

Q Do you recall what Mr. Haire said on that subject?

A. I think those discussions were essentially at the time of and with this --

Q Committee?

MR. SOUTHER: Let him answer the question, please.

A. With this ~~Selection~~ Qualifications Committee.

Q All right. We will get to that.

At the time that Mr. Haire first spoke to you about this in March of 1974, did you know that Anchor Corporation was a subsidiary of Washington National Corporation?

A. Yes.

Q. Now, being ready to go into the insurance business, did you know that Washington National was in the same business?

A. They are not in the same business.

Q. Are they in the insurance business?

A. They are an insurance company, and we are, but there is no similarity -- we are a very special insurance company.

Q. You don't compete with Washington National; is that correct?

A. We sell no products that Washington National sells.

Q. Were you aware, at the time, that Washington National, a parent of the Anchor Corporation, was also in the insurance business?

A. Yes.

Q. How did you become aware of that?

A. There was a -- it was common knowledge in the Street that Washington National, I don't even know when, bought Anchor Fund Management Group way back. I don't even know when it was.

Q Do you recall when you met with the Qualifications Committee?

A Yes.

Q When?

A It was in late March, 1974.

MR. TERSIGNI: Can we have this document marked for identification. I'd like it marked in sequence to the last Haire exhibit, which, I believe, was Plaintiffs' 12 for identification. Please mark this as 13 for identification.

(Document was marked as Plaintiffs' Exhibit 13 for identification, as of this date.)

BY MR. TERSIGNI:

Q Who was present at that meeting, Mr. Kendall?

MR. SOUTHER: Did you establish the date at the meeting?

MR. TERSIGNI: He said the latter part of the end of March.

A Members of the committee, Dr. Kemmerer, Dr. Robichaud, and Mr. Haire.

Q Did you know Dr. Kemmerer?

A. No.

Q. Did you meet him for the first time at this meeting?

A. Yes.

Q. Did you know Dr. Robichaud?

A. No.

Q. Your first acquaintance with her was at this meeting, too?

A. Yes.

Q. Who introduced you to the two of them?

A. Mr. Haire.

Q. Where did the meeting take place?

A. At the Westminister and Parker offices of the Funds.

Q. Is that also Anchor's office?

A. Yes.

Q. Would you describe for us what transpired at that meeting? I'd like you to tell us, as accurately as you can, the substance of what was said and by whom.

A. Well, the chairman, Mr. Kemmerer, began to describe the Anchor funds, the people on the board, the frequency of meetings and their method of functioning.

They asked me a number of questions about my background. I had submitted a biographical resume. They looked and asked me questions about some of the items in that in terms of the knowledge and experience.

We talked about the condition or the status of the securities markets and securities industry.

Those were the subjects that I remember.

Q What, if anything, did Mr. Haire say?

A. I don't have any recollections of anything special I would attribute to Mr. Haire.

Q Do you remember anything he said at this meeting?

A. Not particularly.

Q Do you remember anything that you said specifically?

A. I indicated to them that I would be willing to consider becoming a candidate. I was concerned about the time requirements and the time of their meetings, how many days of a business year it might take, and inquired of that.

Q Did they explain to you what your

functions would be as an outside director?

I am sure they did.

Q What did they tell you?

A. That, "you are a representative of the Fund shareholders"; that they had regular meetings; that they functioned through a series of committees as well as a board.

That's about it.

Q Did you have any understanding whether, as an outside director, you would be asked to make recommendations regarding specific investments?

A. Recommendations? No.

Q My question was, did you have any understanding whether you would be asked to do that.

MR. SOUTHER: He just said no.

Q You had no understanding; is that right?

A. No.

Q well, what is your answer, sir?

MR. POLLACK: The question is confusing him.

MR. SOUTHER: You asked him if he had an understanding he was to make recommendations for security purchases, and he just said twice he did not have that understanding that he was supposed to make recommendations for securities purchases.

Now, if you meant to ask him something else, or --

MR. TERSIGNI: All right. You're wasting time.

MR. SOUTHER: I'm not wasting time. You're confusing him.

BY MR. TERSIGNI:

Q Was it your understanding you would be asked to make recommendations with respect to specific investments?

MR. SOUTHER: I object to the question.

Q You may answer.

A No.

Q Was it your understanding that that would not be part of your function?

A ~~No.~~ Yes.

Q What understanding did you have on that subject?

MR. SOUTHER: If any.

MR. TERSIGNI: If any.

A It's my understanding that Fund directors do not recommend specific securities or securities issues to be purchased by the Fund.

Q What was your understanding of what specifically you would do as a representative of the stockholders?

A The Fund directors are to oversee, on behalf of the shareholders, the managment activities of whoever the Fund manager is. They are to make judgments as to the proficiency and efficiency of that management. They have a responsibility for the ~~contact~~ contract with the manager. They have a responsibility for overseeing the expenses, the safety, security, custodial services provided to protect the share investor.

They have a responsibility relative to how the brokerage fees are paid. They have a responsibility for the quality of the research and methods that are used in the handling of the funds of the shareholders.

Q When you refer to research, research by whom?

MR. SOUTHER: Would you please tell us how this is relevant to the question that the judge has permitted you to discovery on; namely, the relationship between these five disinterested directors and the directors Qualification Committee?

MR. TERSIGNI: Mr. Haire was on the committee,and I would like to know what this witnness's concept of Mr. Haire was and what he was supposed to do.

MR. SOUTHER: That's not the question addressed to him at all. You are asking what these folks are supposed to do as directors now insofar as handling brokerage.

MR. TERSIGNI: He has already answered and he referred to research.

MR. SOUTHER: Insofar as handling brokerage and research, and things of that nature, which is far afield from the issue on this lawsuit, unless you can give me a better answer, I will tell him not to respond to that, and we will have to move on to something that may be relevant.

BY MR. TERSIGNI:

Q You just referred to research in your last answer.

Research by whom did you intend when you gave that answer?

MR. POLLACK: The question is outside the scope of these proceedings.

MR. TERSIGNI: Are you directing him not to answer?

MR. POLLACK: I have no power to, and indeed, that is not my function.

THE WITNESS: Please read the last question back.

(Question read.)

Q Would you answer that question, please.

MR. SOUTHER: Make sure my objection to this is noted.

MR. TERSIGNI: It's on the record. You're delaying this. You are telling me your witness has got to go, and you are making these interminable speeches.

Your objection is on the record, sir.

MR. SOUTHER: Have you finished interviewing me?

Make sure my objection is there. I will allow this question and answer; I will not permit you to go any further in this area.

A Research by the research staff of the Fund managers, as well as research from the securities industry generally.

MR. TERSIGNI: On the statement of counsel that he is going to direct his witness not to answer any further questions on this particular aspect of his testimony, I am going to move on.

MR. SOUTHER: If you want to direct the question and have me object to it, fine.

MR. TERSIGNI: I don't want to waste time.

MR. SOUTHER: I don't want you to waste time, either.

I am not going to permit you to go down irrelevant areas. Don't try to say I blocked you from anything yet.

MR. TERSIGNI: Then I will ask my questions.

BY MR. TERSIGNI:

Q Did this include research by Anchor?

MR. POLLACK: Did what include research by Anchor?

I object to the form of the question.

Q Please answer the question.

MR. SOUTHER: I object to this question,

and I will direct the witness not to answer. It's entirely outside the scope of what Judge Werker advised you folks you can inquire into.

Q Mr. Kendall, was it your understanding, as you were considering becoming a director, that one of the things you would be doing as a director would be overseeing Mr. Haire in what he was doing as the Fund manager?

MR. POLLACK: I object to the form of the question.

MR. SOUTHER: I object to the form of the question.

MR. POLLACK: It is demonstrable that the witness cannot answer.

BY MR. TERSIGNI:

Q I meant Mr. Haire.

Was it your understanding, as you were giving consideration as becoming a director, that one of your functions would be to oversee Anchor in connection with its investment advisory services?

A. Yes.

MR. POLLACK: I object to the form of the question.

Q Was it your understanding that part of those services would be research done by Anchor and the staff?

MR. SOUTHER: Object to the form of the question. It's been asked and answered.

Q Would you answer, please?

A. Yes.

Q Would that be research which would be done in connection with recommending particular investments?

MR. POLLACK: I object to the form of the question.

Q You may answer.

A. Would you repeat the question?

MR. TERSIGNI: Read back the question, please.

(Question read.)

MR. SOUTHER: Would you kindly state for me what the relevance of that question is to the issue that is presented here?

MR. TERSIGNI: I am inquiring into the relationship between this gentleman, as a director and a member of the Qualifications Committee, towit, Mr. Haire. Mr. Haire hopes to be the chief executive officer of Anchor, that would also speak to that question.

I am exploring the relationship between the two people. His understanding of it. I'd like an answer to my question.

MR. SOUTHER: Didn't he give you a rather full answer as to what he understood was the role of a director to supervise the advisor and all these different functions?

MR. TERSIGNI: Would you read back the pending question?

(Question read.)

MR. SOUTHER: I direct the witness not to answer.

BY MR. TERSIGNI:

Q As a former vice president of the New York Stock Exchange, and as an economist, and someone who had worked for a number of years in the securities field, were you generally familiar, as of 1974, with the Penn Central collapse?

MR. POLLACK: I object to the form of the question.

Q You may answer.

A Yes.

Q Were you generally familiar with the

Q Yes. Like banks, insurance companies, the kind of institutions that are described in sections of annexations to the minutes of the disinterested quorum meetings.

You know what I am talking about, don't you, Mr. Kendall, this is one of the things you asked Mr. Haire for.

MR. SOUTHER: I object to the question. You have three questions pending. Which question do you want answered?

A The question I would --

MR. SOUTHER: I'd like to know which question he would like you to answer.

MR. TERSIGNI: The witness asked me for a clarification. I clarified my question to indicate I am talking about investments by anyone.

Q I am asking you, Mr. Kendall, as of 1974, when you were considering becoming a director of the Anchor funds, were you aware that there had been substantial investments made in Penn Central commercial paper within the preceding several years, which had not been paid when due? Are you aware of that?

A. Other than your -- the word "substantial," yes, I knew there were investments in Penn Central --

Q Were you aware --

MR. SOUTHER: Let him finish his answer.

Q Finish your answer.

A. I am concerned by your use of the word "substantial."

Yes, I knew there were losses in Penn Central paper.

Q And you knew that these losses aggregated millions of dollars, didn't you?

MR. SOUTHER: I object to the form of the question.

Q You may answer.

A. Yes.

Q Did you know that the largest investment of that sort which had been made had been made by Fundamental Investors?

MR. SOUTHER: I object to the form of the question.

Q You may answer.

A. No.

Q Did you know that Fundamental Investors had made such investment?

MR. SOUTHER: What do you mean by "investment"?

MR. TERSIGNI: At Penn Central commercial paper.

MR. POLLACK: At the time he became a director?

MR. TERSIGNI: Yes, sir.

A. I have no great recollection of that.

Q. Were you aware, or did anybody tell you, that Penn Central had purchased --

Strike that.

Were you aware, at the time that you were considering becoming a director, or did anyone tell you, at the time that Fundamental Investors had made a purchase of $20 million of Penn Central commercial paper within the preceding five years or so?

A. No.

Q. When did you first become aware that such an investment had been made?

A. I would say after I became a member of the board.

Q. I believe you have already testified

that at the time you were considering becoming a director, you were aware that investments had been made of this type. Is that correct?

MR. SOUTHER: Do you mean investments had been made by people generally in Penn Central commercial paper?

MR. TERSIGNI: Yes; which had not been paid when due, and I think the answer was yes, you were generally aware of that.

Q Is that right?

A. In the general world that Penn Central commercial paper investments were made, yes.

Q Had you been following the Penn Central situation in the newspapers and other financial publications?

A. Not following it.

Q Do you recall --

A. I knew it existed.

Q Did you have any idea by whom any of these purchases had been made?

A. I have no recollection of specific companies.

Q Did you have any understanding at the time whether any of that paper had been bought by mutual funds, apart from the specific identity?

MR. SOUTHER: What time do you mean?

MR. TERSIGNI: All of these questions are addressed to the time he was considering becoming a director.

MR. SOUTHER: Thank you.

MR. TERSIGNI: In March of '74. In or about that time.

A. This subject did not enter into my consideration of the Anchor or the Fundamental Investor board position.

Q. Well, I am not asking you whether it entered into your consideration. My question is, as of March '74, were you aware that purchases had been made by mutual funds of Penn Central commercial paper which had not been paid when due?

A. I don't have any recollection of great awareness of who they were.

Q. I am not asking you who they were. I am asking you whether you were aware, as a former vice president of the Exchange, as an economist, someone who had worked in the security field for a number of years, were you aware that mutual funds, whoever they might be, had made investments in Penn

Central paper which had not been paid when due?

MR. SOUTHER: I object to the form of the question.

Q Were you aware of that?

A. I don't have any awareness.

MR. POLLACK: The question was, were you aware of it? Not what your present awareness is.

MR. SOUTHER: I think I take it to mean he has not personal awareness that he was aware at that time.

A. I have no present awareness that I was aware at the time that mutual funds were in this group of companies that had Penn Central commercial paper investments.

Q When you met with the Qualification Committee, Mr. Kendall, and I will represent to you it was March 27, 1974, according to the minutes furnished by Mr. Souther, when you met with the committee that morning, had you already made up your mind whether you'd accept a nomination to be a director on the Anchor funds?

A. No.

Q How far would you say you were from

making that decision in terms of making up your mind?

MR. SOUTHER: This really doesn't go anyplace, because he hadn't been offered the position yet.

You can't make up your mind whether you are going to take a position that hadn't been offered to you.

I object to this.

Q Had you made up your mind whether you would accept such a position if it was offered to you?

A. At the time of the meeting, no.

Q How far along had you gotten in making up your mind whether you would accept that position if it were offered to you?

A. I don't have a percentage of mindmaking. My purpose in going to that meeting was to meet a good number of people I did not know. To learn more about that board, group of people, time problems, responsibilities, and it was a fact-finding exploration of my part.

Q How long did it take you to make up your mind?

A. The offer of this committee, or whoever does it, to me, to submit my name to the shareholders as a director was not made at that meeting. It was sometime later.

Q My question is, when did you finally make up your mind? Assuming that the offer was at some point made. When did you make up your mind to accept?

A. I'd say -- I don't know the date. Sometime after -- within the next several weeks, I guess.

MR. SOUTHER: Don't guess.

A. Well, I don't know. Exactly.

MR. SOUTHER: Fine.

Q Had you told Mr. Haire, prior to March 27, that if a position were offered to you, you would accept it?

A. Not that I remember.

Q Did you tell him that at lunchtime after you met with the Committee on March 27?

A. Not that I remember.

Q Did you tell him between lunchtime and the time that the board of directors met that afternoon?

A. Not that I remember.

Q Do you recall whether the board met that very afternoon and --

A. I have no knowledge of that whatsoever.

Q (continuing) -- and whether or not the board voted to designate you as a nominee for election on its 1974 annual slate?

A. I have no knowledge that that action took place.

Q If it did take place, would it refresh your recollection as to whether you had indicated to the board, or to Mr. Haire, that you did accept?

MR. POLLACK: I object to the form of the question.

Q You may answer.

A. If in fact that board met at that time, to my knowledge nothing happened for some period. The date of their annual meeting was in June, and I did not join that group until June. I think it was some weeks later before they had finalized my agreement on candidacy. I was just a candidate; I wasn't a member. I was going to be put up before the shareholders.

Q My question is, prior to the board designating you for a nominee for director, did you tell the board that you would accept that position?

A. I don't think it worked that way.

Q. Let me show you the document that's been marked Exhibit 13 for identification. The first page of that appears to be some minutes of the Directors Qualification Committee meeting on the morning of March 27. The second page refers to action taken at the board meetings of the Funds held on March 27, 1974, which I assume was that same afternoon. It includes a resolution by the board, on the recommendation of the committee, that Mr. Leon T. Kendall be designated as a nominee for election at the 1974 annual meeting.

I ask you whether that refreshes your recollection.

MR. SOUTHER: It refreshes his recollection as to what?

MR. TERSIGNI: As to whether or not he did not in fact tell Mr. Haire, or someone else that very day, that he accepted or would be willing to accept their designation, as directed.

MR. SOUTHER: Okay.

Q. Let me rephrase the question.

Having read that exhibit which I have now shown you, does it refresh your recollection as to whether or not you did, on March 27, sometime before the board of directors designated you as a nominee, express your consent to be put on the slate?

A. It's my recollection that my agreement to do this occurred after the Director Qualification Committee, and whatever mechanism they had had done its work ~~and regarded~~, and then some communication came back to me. That, I did not beforehand in any way indicate otherwise.

Q. Have you read the extract from the board minutes which indicate that they nominated you on the 27th that same afternoon?

MR. SOUTHER: You just showed him that and he read it.

Q. You read it?

A. Yes.

Q. Is it your testimony you were nominated by the board prior to the time you expressed your agreement?

A. Yes.

MR. FRIEDMAN: I object to the

characterization of this as a nomination.

MR. TERSIGNI: You can characterize it as anything you like. I think the resolution speaks for itself.

MR. FRIEDMAN: I am noting my objection.

Q Do you see in the minutes it indicates, after discussion of the qualifications of Mr. Kendall, a motion was made and seconded pursuant to which a resolution was adopted in substance as I mentioned earlier, that Messrs. Haire, Burks, Hutchinson and Martin did not vote? Do you see that?

A Yes.

Q Now, Mr. Haire was the one who invited you to give consideration to becoming a director, was he not?

A He made the telephone call on behalf of that committee.

Q It was through him that you came to this Fund; isn't that true?

MR. SOUTHER: Object to the form of the question.

A I think that's a bit of a big conclusion.

Q From whom did it come?

A I came before the Fund Director Selection Committee after a call from Mr. Haire. ~~If you mean the fact that he called me indicates I came through him to the Fund, then I will say ye~~s.

Q He called you and he introduced you to the other members of the committee; is that right?

A Yes.

Q And he told the committee he thought you were a good man for the job?

MR. SOUTHER: I object to that.

Q Didn't he tell the committee he thought you were a good man for the job?

A I submitted my qualifications on the merits, and I don't know what Mr. Haire told the committee.

Q Do you know why he didn't vote on this resolution?

MR. SOUTHER: Please, Mr. Tersigni, this is a meeting Mr. Kendall didn't attend. How can he possibly know?

MR. TERSIGNI: Maybe Mr. Haire told him?

MR. SOUTHER: Why don't you ask him that question?

MR. TERSIGNI: I want to ask him whether he knows.

MR. SOUTHER: I object to the question.

BY MR. TERSIGNI:

Q Do you know why Mr. Haire didn't vote?

MR. SOUTHER: Do you know, yes or no.

A. No.

Q Did anyone tell you why Mr. Haire didn't vote?

A. No.

MR. SOUTHER: I object to that question. It hasn't been established whether he knew before this minute whether Mr. Haire voted or not.

A. No.

Q Do you know how many directors sat on the board on March 27?

A. No.

MR. TERSIGNI: For the record we have been giving an extract of what I understand to be minutes from the board meeting of March 27. We don't have a cover page showing how many directors were present.

I would request that both with respect to these extracts and the other various extracts that Mr. Souther has furnished us, and I would also like to know how many directors comprised the board as of March 27, 1974.

MR. SOUTHER: That's a question of public knowledge.

MR. TERSIGNI: Well --

MR. SOUTHER: I am sure you know that.

MR. TERSIGNI: I don't know that, and I am not sure it's a matter of public knowledge, and I will ask for that information.

MR. SOUTHER: You purport to sue on behalf of the Funds. You ought to know how many directors it has.

MR. TERSIGNI: The question is not how many directors it has. The question is how many directors did it have on March 27, 1974, and I request that information, and if you decline to give it to me, I would like some statement of grounds.

BY MR. TERSIGNI:

Q. Did Mr. Haire ever tell you he was a defendant in the Lasker suit?

MR. SOUTHER: In the what?

MR. TERSIGNI: Read the question back.

(Question read.)

A. No.

Q. Did you ever find out that he was?

A. Yes.

Q. When did you find that out?

A. After I became a member of the board.

Q. Can you fix it for me by month and/or year?

A. July 1974. July meeting of the board.

Q. Between the time that you agreed to become a director, which I believe you said was several weeks after March 27, and July 1974, when you found out that Mr. Haire was a defendant in the Lasker action, had anyone ever told you that you would be asked to give consideration as a director to what action, if any, should be taken by the Fund, or on behalf of the Fund, against Mr. Haire or Anchor, with respect to the Fund's investment in Penn Central paper?

MR. SOUTHER: Would you read back the whole question?

(Question read.)

MR. POLLACK: I object to the form of the question.

I respectfully ask the questioner to

rephrase and shorten the question.

BY MR. TERSIGNI:

Q I would like an answer to the question if you feel you are capable of giving an answer.

A. The answer is no.

Q When you agreed to become a director, early in 1974, other than Mr. Haire, did you know any of the other directors of Fundamental or of any other of the Anchor funds?

MR. SOUTHER: I object to the form of the question.

Q You may answer.

A. May I see a list?

Q Do you know who the directors were at that time?

MR. SOUTHER: At which time?

Q When you agreed to become a director, did you know who else was on that board besides Mr. Haire?

A. I met them.

Q Do you have any recollection, any awareness of being aware, who they were?

A. I, without looking at the list, I knew Mary O'Connor, and I think that is all.

Q How did you know Mary O'Connor?

A. Mary O'Connor lived in Elizabeth, or the same general area, and she either had a son or a nephew or grandson, or something, in school with my children, and we would see each other at the football or basketball, or whatever games.

Q Did you consider her a friend of yours?

A. Definitionwise, she was somebody I knew. I don't know that I would categorize it as anything than an acquaintance, if that's a gradation of friend.

Q Did you know, prior to your being invited to the board of the Anchor Funds, that she had also been invited and became a director?

A. I am not sure that I did.

Q But you did find out she was a director at about the time you were speaking to the committee and so forth?

A. Yes.

Q Did you discuss with her the possibility of your becoming a director?

A. No.

Q At the time you were giving consideration to becoming a director, did you know Dr. Burks?

A. Dr. Burks?

Q. Harry G. Burks.

A. ~~I know Dr. Burks from --~~ Yes.

Q. How did you know Dr. Burks?

A. He was on the School Board.

Q. In --

A. At the Pingry School.

Q. And you were on that board, also?

A. Yes.

A. How well did you know Dr. Burks?

A. Through the Pingry relationship.

Q. Have you visited him at his home?

MR. POLLACK: May he answer the question, please.

MR. TERSIGNI: I thought he had.

A. I had probably been at a large gathering at the Pingry -- at Mr. Burks' home for the Pingry.

Q. Do you consider Dr. Burks a friend?

MR. SOUTHER: Now or 1974?

MR. TERSIGNI: I think my question was, "Do you". Whatever that means.

MR. SOUTHER: If you don't know what it means, how will the witness know?

MR. TERSIGNI: I think it is so evident it should not require a lot of discussion.

BY MR. TERSIGNI:

Q Do you consider him to be a friend?

A Acquaintance.

Q Did you so consider him in 1974?

A Yes.

Q When you joined the Pingry board, Mr. Kendall, was Dr. Burks already on the board?

A He's a life member.

Q Did he have anything to do with your going onto that board?

A No.

Q How did you happen to become a member of the board?

A I had two or three boys in the school, and I became a father trustee.

Q Did anyone invite you onto the board?

A The headmaster and the chairman, Mr. Mac Bristol ~~Crystal~~.

Q Was Mrs. O'Connor on that board?

A No.

Q Other than Dr. Burks, was there anyone else on that board who had any connection, or has any connection, either with Fundamental or any of the Anchor Funds?

A. Not to my knowledge.

Q. With respect to the hospital board, I think it was the Elizabeth Hospital on which Mr. Haire was a director, other than Mr. Haire, was there anyone on that board who had, or has any connection, either with Fundamental or any of the other Achor Funds, or Anchor?

A. No.

Q. As of the time you became a director in 1974, did you know Edward B. Burr?

A. No.

Q. Did you know Thomas F. Chalker?

A. No.

Q. Harvey C. Hopkins?

A. No.

Q. S. P. Hutchinson?

A. No.

Q. Donald L. Kemmerer, K-e-m-m-e-r-e-r?

A. No.

Q. A S. Mike Monroney?

A. No.

Q. Charles F. Phillips?

A. No.

Q. Jeff Wade?

A. No.

Q. Did you know Louis F. Laurn, as of that time?

A. No.

Q. Did you know Dr. Robichaud?

A. No.

Q. Did you know William J. Stevens?

A. No.

Q. Did you discuss with Mr. Haire, or anyone else, prior to the time that you agreed to become a director, of what your compensation would be?

A. I was told what their fee schedule was. ~~I don't~~

Q. What total compensation did you earn as a director of Fundamental and the other Anchor Funds during the year 1974?

MR. SOUTHER: I object to the form of the question insofar as it concludes if he was a director of all the other funds.

Q. When you became a director of Fundamental in 1974, did you become a director of any other fund in the Anchor group?

A. Yes.

Q. How many others?

A. Five others.

Q. Were there any other funds in the Anchor group of which you did not become a director?

A. Yes.

Q. Which ones?

A. Anchor Daily Income Fund.

Q. Was that the only one?

A. Yes.

Q. Was there a reason why you did not become a director of that particular fund?

A. Yes.

Q. What was that reason?

A. The Anchor Daily Income Fund is a so-called money market fund. It provides people for an alternative, with an alternative, place to put their liquid assets other than a savings and loan and banking account.

Most of my customers are savings and loan and banking organizations, and I felt it would be prudent for me not to be active in a fund that had an impact on their business.

Q. Did you discuss that with Mr. Haire, or any other representative of Anchor?

MR. SOUTHER: Do you mean the Fundamental --

MR. POLLACK: What is the relevance of this decision with regard to the Daily Fund?

Q Can we have an answer to the question.

MR. SOUTHER: What's the question, you're talking about Anchor or Fundamental?

MR. TERSIGNI: Read back the question.

(Question read.)

MR. SOUTHER: I object to the form of the question.

What's the relevance, please?

MR. TERSIGNI: I don't want to make any more comments on the record, which I consider to be a complete waste of time.

If you want to direct him not to answer, do it, but I will say this, Mr. Souther, you, yourself, objected a moment ago when I was getting into the area of compensation that it had not been established that he was a director of all the funds. I am not going into that. That's why I am on this question.

MR. SOUTHER: I want the record to be

clear, and I think you are aware before you ask the question that he was not a director of all the funds.

MR. TERSIGNI: No, I was not.

MR. SOUTHER: He so testified. Mr. Haire so testified.

BY MR. TERSIGNI:

Q Do you want the question read back or can you answer it?

A I discussed this with the full board of the Fund.

Q Did you have any discussions with Mr. Haire individually?

A Not that I can recall.

Q During the year 1974, what was your total compensation as a director of Fundamental and any other Anchor Funds on whose board you served?

A I was told yesterday it was $4900.

Q Let me show you Exhibit 11 for identification, which was previously marked.

Is that what you are referring to?

A Yes.

Q To the best of your knowledge, is that the complete compensation that you were paid for on all committees, whatever else you may have done, as a director, so on and so forth?

A. Yes.

Q. During the year 1974?

A. Yes.

Q. For the year 1975, this schedule shows 1975 plus $600 for serving on the Disinterested Quorum Committee.

Are those figures complete for the year '75?

MR. SOUTHER: I will object to your statement.

This piece of paper, which was produced to you, does designate the disinterested quorum as a committee, but I think it was established at the Haire deposition that this was not a committee, but was in fact the board of directors meeting.

Q. My question, Mr. Kendall, is, other than the 1975 and the $600, did you receive any other compensation during the year 1975 in connection with your service on any board in the Anchor group, or any committee of any board, or any other function relating to the Anchor group of funds?

A. I did not receive any additional compensation. I would like to check, because I cannot tell you those were the exact numbers.

Q All right.

I so request that you check it, and please advise me whether the figures shown on this Exhibit 11 are complete and all-inclusive.

Can you state how many board of directors meetings you attended during 1974 in connection with any of the Anchor Funds on whose board you served?

A. Five or six.

Q During 1975?

A. Ten.

Q During the time in 1974, when you were a director, and during '75, did you attend all meetings of the board of directors that were scheduled?

MR. SOUTHER: I will object to your question if it is going beyond the date of January 22, 1975, because there is nothing, really, that is later than that with respect to his participation on the board that is relevant.

MR. TERSIGNI: Please read the question

back.

(Question read.)

A. You are talking right through the end of the year?

Q. Yes.

A. No.

Q. How many would you say you missed during that period, '74 and '75?

A. I can remember missing at least one, because of out of the country travel. I will stop right there.

Q. Okay.

When you attend a board of directors meeting, is it the practice to hold meetings in sequence of all of the funds comprising the Anchor group on the same day?

A. Yes.

Q. They usually start in the morning; is that right?

A. They usually start in the afternoon.

Q. In the afternoon?

A. Yes.

Q. About what time?

A. Sometime after 1:00.

Q How long, generally, do all of the meetings take?

A. Well, last year it would be till around 5:00, 4:30 or 5:00.

Q You were a director on all of the funds except one.

Did you leave when that particular meeting was about to be held?

A. I might, might not.

Q You certainly didn't participate?

A. I did not participate.

Q In participating in this sequence of board meetings, and in your case, it would be a total of six; is that right?

A. Five.

Q Five, including Fundamental, or Fundamental plus five?

A. I guess your right, six.

Q In attending this series of six board meetings, typically, how many matters would be voted on? Give me some idea.

MR. SOUTHER: I object to this.

What's the relevance of this to the subject the judge said you can ask about, and this is the relationship between these five people and --

MR. TERSIGNI: Mr. Haire, as director, and I am inquiring as to what was done.

Can I have an answer.

MR. SOUTHER: I object to that, and ask him not to answer.

It's totally irrelevant how many subjects came before it periodically in a year and a half.

MR. TERSIGNI: I didn't ask him that at all.

BY MR. TERSIGNI:

Q On a typical day when there were board meetings held as to the six funds, on whose board you served, how many votes would you estimate might be taken?

MR. SOUTHER: I object to that, and direct him not to answer.

Q Do you recall voting on matters, and Mr. Haire voting on matters as another director during these meetings?

A There are votes at directors meetings.

Q Your lawyer wouldn't let you answer how many. How many times would you estimate that you and Mr. Haire voted on the opposite sides of a question?

MR. SOUTHER: I object to that.

Q Can we have an answer, please?

A I really don't know.

Q Can you remember ever voting differently on a question or on a resolution that Mr. Haire voted?

A I can remember expressing significant differences in discussion.

Q My question --

MR. SOUTHER: Have you finished your answer yet?

A In discussion, in focus relative to markets, groups of stock, various other procedures.

Q Have you finished?

A Yes.

Q My question, Mr. Kendall, is, can you recall a single instance where you voted one way and Mr. Haire voted the opposite way? Where you said yes and he said no, or he said no and you said yes. Whatever the discussion may have been. Did you ever vote differently?

A I have disagreed with Mr. Haire many

times.

Q Can I have an answer to my question, please?

MR. SOUTHER: I think he just answered it.

MR. TERSIGNI: I don't think so, with all due respect.

Q You understand when I say "vote," what I mean, do you not, sir?

A. What do you mean?

Q At the board meetings, are there occasions when someone proposes a resolution and it is econded and there are votes taken? Have you had that experience?

A. Yes.

Q Can you remember a single instance where you voted on one side of a resolution and Mr. Haire voted contrary?

A. Yes.

Q How many times can you recall?

A. There must have been a few.

Q Can you approximate?

A. I don't know that I can approximate for you.

Q Would you say there were less than five or more than five?

MR. SOUTHER: You have asked the man to think about a year and a half's worth of meetings, and any number of discussions that may have come up and votes that may have been taken from insignificant to significant to wide-ranging situations. He gave you his best estimate. Can we role on to something else that is relevant.

MR. TERSIGNI: I think it's very relevant.

MR. SOUTHER: I don't think it's relevant.

MR. TERSIGNI: Are you directing him not to answer?

MR. SOUTHER: I didn't do that yet. I asked you to try to move on to something that is relevant instead of asking the man to answer the third time to something that is not relevant. He answered "It must have been a few."

BY MR. TERSIGNI:

Q Was it less than five or more than five?

Can you tell me?

A. I can't tell you.

Q. Do you remember the subject matter of the resolution as to which you and Mr. Haire voted differently?

A. First, I do not look and see ~~whether~~ how each individual director is voting, but I know on an area, one area is relative to bank stocks where I have certain minority feelings and another is relative to various types of board meeting procedures, ~~I'd have to --~~

MR. SOUTHER: You have answered the question.

Q. Would you say you voted on hundreds of matters during the period in '74-'75?

A. No.

MR. SOUTHER: I will object -- I object to the question.

I instruct the witness not to answer, because if you are going to start into all the internal functionings of these six boards, of these six funds, and differences that the board may have had about a number of confidential subjects that have nothing to do with this, I have to direct the witness not to answer.

It's really none of your concern what some of these other funds are thinking about doing or voting on.

Insofar as Fundamental is concerned, it's none of your concern what has happened in the year 1975.

MR. TERSIGNI: My question is, "During this period, did you have occasion to vote on scores of subjects?"

MR. SOUTHER: I direct the witness not to answer on the same gounds.

BY MR. TERSIGNI:

Q Do you get copies of the minutes as a director?

A. Yes.

Q Do you keep them?

A. Typically read them, keep them for one meeting.

Q If I were to ascertain during the period from the time you became a director to the time you voted as a member of the disinterested quorum, how many times you dissented from a vote of Mr. Haire, do you think you could do that?

MR. SOUTHER: He just told you. You have asked him that three times.

MR. TERSIGNI: No, I haven't. I am asking him now specifically the period from the time he became a director to January 6, 1975.

Q How many times would you say you have dissented during that period?

A. In order to give you a fair picture, I will tell you that dissent in a board meeting is more than votes.

Q I am interested in votes now.

MR. SOUTHER: You're just interested in votes, not a fair picture; is that what you are saying?

MR. TERSIGNI: I am interested in votes. I believe that no matter what a man says, it ultimately comes time to vote.

MR. FRIEDMAN: You overlook the fact that through discussion the differences might be resolved.

MR. TERSIGNI: That's correct.

MR. SOUTHER: The subject may not be

presented for vote because of discussion and dissent during discussion.

MR. TERSIGNI: I am not asking him that.

MR. SOUTHER: But you're not asking for a full story then.

MR. TERSIGNI: That's what you say.

A In the Fundamental board and boards, votes tend to be on declaration of dividend, things of a type where the discussion quickly leads to a unanimous judgment as to what we feel is best for the shareholders.

We talked that ~~down~~ out as to whether we are going to pay six or seven or eight cents, and there may be some differences of opinion, but ~~before~~ long before you vote ~~after~~ they're gone.

In a fair picture, if you want me to tell you through my recollection how many times I would have been on the other side, I think I can do that if I do a little research for you.

Q My question is, and let's be sure you understand my question, my question is, from the time you became a director to January 6, 1975, how many times can you recall that you and Mr. Haire voted on different sides of a question as directors?

I am asking you -- and still not rise to the level of a normal vote of a board of directors on a resolution presented to a business corporation. I am asking you which are you talking about?

MR. TERSIGNI: I am talking about votes on resolutions.

MR. SOUTHER: Thank you.

BY MR. TERSIGNI:

Q Do you understand that, Mr. Kendall? How many times was the board asked to vote, to take a vote on something, whether you were going to do something or not do it, whether you would take one position or another position, and the board, as a board, the directors voted, they said yes, no or, "I abstain"?

How many times, from the period from when you became a director to January 6, 1975, can you tell me you voted one way and Mr. Haire voted a different way?

A I could go back and tell you how I voted. I do not know how Mr. Haire voted. I cannot tell you where Mr. Haire was on any particular issue.

Q Do you have any recollection today,

of you and Mr. Haire having dissented on any vote taken during that period? Do you remember that ever happening?

A. Can you repeat the question?

(Question read.)

MR. SOUTHER: Do you mean he and Mr. Haire dissenting together from votes of others, or do you mean being at contrary to each other?

MR. TERSIGNI: I am talking about he and Mr. Haire voting contrary to one another.

Q. I am saying to you, do you have today, as you testified here, any recollection, are you able to tell me that that ever happened from the period when you became a director to January 6, 1975?

A. I answered earlier, and I will answer again, that I can remember a couple of instances where that occurred.

Q. Earlier I was asking you about a broader period. I want you to understand I am asking you now about the period from when you became a director and you attended your first meeting, which may have been June or July of '74, to January 6 of '75. Within that limited period of approximately six months.

A. I have to go back and do some research, because I can't -- I don't know ~~what~~ how Mr. Haire voted.

MR. SOUTHER: He's giving you his best recollection.

MR. TERSIGNI: I would like to leave a blank here. I would like you to fill in, when you sign the transcript, how many times during the period I have indicated you and Mr. Haire voted differently as directors on any given corporate subject.

MR. SOUTHER: You can leave all the blanks you want. I am not going to fill it in and won't have Mr. Kendall fill it in.

You have asked him for his recollection, he gave it to you six times. He searched his memory scrupulously. He told you repeatedly his recollection was there were several events over a year again, he can remember a couple during the six-months period. He said he can remember a couple of instances.

I am not going to have him go back, and that's not the purpose of the deposition, to there were, he can remember, a couple of instances.

BY MR. TERSIGNI:

Q During the period from the time you became a director, in 1974, whether the first meeting was June or July, I don't remember, but whatever the first meeting was, up to January 6, 1975, do you, today, have any recollection of any other director at a board meeting at whichyou participated voting on the opposite side of a question from Mr. Haire?

A. I don't keep in my memory the pro and con of Mr. Haire, and I can't tell you.

Q But my question is, and I am not trying to confuse you or to confuse anybody, my question is, do you, today, have a recollection of any other director voting against Mr. Haire in the sense he voted one way and the other director voted an opposite way? Do you have any such recollection today?

MR. SOUTHER: One way or the other.

A. Yes.

Q How many instances can you recall during that period?

A. I have a recollection of one.

Q Of one?

A. Yes.

Q What was the subject matter of that particular instance?

A. Something to do with gold and gold stocks and that general ~~bracket~~ category of investments.

Q How many directors do you remember voting differently from Mr. Haire on that occasion?

A. I remember one gentleman being very vigorous in that area.

Q Who was that?

A. Dr. Kemmerer.

Q Do you remember at any time, during this period from the first meeting you attended in June, July of '74 to January 6 of 1975, any other member of the so-called disinterested quorum voting differently from Mr. Haire on a different question?

A. I do not watch how Mr. Haire votes. ~~and I think you may be interested in that subject, and I am sure you are~~.

Q My question is --

MR. SOUTHER: Excuse me, let him finish.

A. I don't look around to see who is

voting what. It is not my responsibility. My responsibility is my vote, my thought is my responsibility. Whoever counts them, counts them.

Q My question is, and I think you can tell me, whether you have any recollection today, of any of these other members of this quorum, during this period, ever having voted differently from Mr. Haire on a different question?

A. I told you I just answered that.

Q Your answer is no, except for this other gentleman?

MR. SOUTHER: That is not his answer.

A. My answer is, I can recall Dr. Kemmerer. I cannot tell you that that is the exclusive instance, and I didn't see it as my responsibility to try to figure out who was voting on what.

Q Mr. Kendall, during the period from the first meeting you attended as a director in 1974, to January 6, 1975, do you today have any recollection of directors Laun, O'Connor, Robichaud, Stevens, or yourself voting differently from Mr. Haire on any question at any of these board meetings?

MR. SOUTHER: You have asked him questions in that area for at least ten minutes.

(Question read.)

A. I have a recollection that several of the people you mentioned expressed individual views at variance with the board. Whether their votes were different than the board or different than the particular member that you specified, Mr. Haire, I cannot tell you.

Q. All right.

When you met with the Qualifications Committee in March of 1974, if you had known that within the next several months you would be asked, as a member of the quorum, to decide what, if any action, ought to be taken with respect to Mr. Haire, by or on behalf of the Fund, in connection with the Penn Central investment, would that have made any difference to you as to whether or not you would have accepted the nomination?

MR. SOUTHER: I object to the question as hypothetical.

Q. I'd like an answer. As it goes to a state of mind and the relationship with Mr. Haire. If you are able to tell me.

THE WITNESS: Can you read that question to me?

(Question read.)

A. No.

Q. Would it have made any difference to you if you would have known you were asked to do that with respect to Mr. Burks?

MR. SOUTHER: Object to the form of the question.

Q. Mr. Kendall, you attended a board meeting on July 24, on the subject of the disinterested quorum.

Do you recall that?

MR. SOUTHER: Object to the form of the question.

Q. You can answer.

A. I attended a board meeting.

Q. Was that subject discussed at that board meeting?

A. Yes.

Q. Would you tell me what was said and by whom on that subject?

A. A report was made relative to the litigation facing the Fund relative to the Penn Central commercial paper. At the conclusion of that, a discussion, we were told, informed, that the Lasker suit, which had in some way been dormant, was now to be activated or made active. There was a discussion on the part of the board relative to its responsibilities in that area.

Q Who made this report that you have been describing? Who was it that spoke?

A My recollections says Mr. Wickers, the secretary, who is also kind of a lawyer, who is a lawyer, was the man that was informing the board.

Q Do you know whether he's an employee of Anchor?

A Mr. Wickers is the secretary of the funds and an employee of Anchor.

Q Was this the first notice that you obtained that Mr. Haire was a defendant in the Lasker case?

A It was the first realization that I had that Mr. Haire and other directors were in this action.

Q Were you told who the other defendants were?

A Not by name.

Q What were you told about who the other defendants were?

A. That there was a lawsuit, that most of the other folks on that board knew about.

This is my second meeting, and I do not know that anybody read me a list of the various people involved, but it was my sense that there was an action that had to be dealt with by the Fund with some speed.

Q When were you told that Mr. Burks was a defendant?

MR. SOUTHER: I object to the form of the question.

Q When, if ever, did you find out that Mr. Burks was a defendant?

A. When I inquired as to who Burks of Lasker versus Burks was.

Q When was that?

A. At that meeting.

Q Other than Mr. Burks, and Mr. Haire, were you aware at that meeting of the specific identity of any other defendant in the Lasker case?

A. I understood that several of our Fund directors, specifically Kemmerer and Phillips, who were in the room, were part of the action.

Q Have you told us your best recollection of everything that Mr. Wickers said at this meeting?

A. Mr. Wickers discussed the existence of, on the board, of a number of directors who represented a quorum of the board, who could be objective about this action and represent the Fund with that objectivity.

Q Did he say anything that you can remember?

A. He was asked what that would entail, and the only things I remember is the people began to talk about counsels separate from the various counsel that the company had or the Fund had, on this action to get an independent insight and view and a number of names of possible individuals were discussed.

Q Did Mr. Wickers say anything else that you can remember? I am interested in Mr. Wickers now.

A. That kind of summarizes Mr. Wickers.

Q Do you recall his saying that at the time the board of the Fund had authorized the commencement of an action against Goldman Sachs Company, it had reserved whatever rights it might have against Anchor Corporation until the outcome of the Goldman Sachs case? Do you recall him having said that?

A. Yes; I thought I indicated that earlier.

Q. Was this the first knowledge or notice that you had about any action by the Fund against Goldman Sachs?

A. I guess I knew the Fund had an action with Goldman Sachs based on reading ~~per~~prospectuses in which I was named as a candidate, or whatever it is, nominee; those kinds of things would have been in those packages of materials.

But there were any number of lawsuits, and I was not impressed by the fact that one or the other required any action by me.

Q. My question is, do you recall when you first found out that there was a suit by the Fund against Goldman Sachs, was it at this meeting or was it when Mr. Haire sent you the material in March, or was it when you met with the committee, or some other time?

A. I would say probably reading the annual materials for the June meeting. Number one would be the first instance; the first focus was at this July meeting.

Q. When did you first hear or find out that the Goldman Sachs action was going to be settled?

MR. SOUTHER: Had been settled.

MR. TERSIGNI: Was going to be or had been settled.

A. I think the directors received notice of that telephonically about when it happened, sometime around the Fourth of July. Or was going to happen, and I can't get any more precise than that.

Q. Was that settlement the subject of a formal board meeting?

A. Was the settlement the subject of a formal board meeting?

Q. Was the board ever asked to approve the settlement?

A. I am sure they did.

Q. Do you recall voting to approve a settlement?

A. Well, it seemed that we must have ratified it at that July meeting. ~~Before we got to the subject that interests you~~.

Q. My question is, do you recall voting to ratify this settlement?

A. I think we voted at the July meeting, and I would have voted at that meeting.

Q. Did Mr. Haire say anything on the

subject of whether or not that settlement should be ratified?

MR. SOUTHER: Is this at the July meeting?

MR. TERSIGNI: Whatever meeting the witness is referring to. He said it was at this July meeting before he got to the question of quorum. I think that's what he just said.

MR. SOUTHER: I think you are putting several things to him.

Are you asking now whether Haire spoke to whether the settlement should be ratified at the July meeting, is that your question?

MR. TERSIGNI: Yes, at the meeting at which the board was asked to ratify, which I think he said was the July meeting.

MR. SOUTHER: He said he thinks at a July meeting they may have been asked to ratify it.

BY MR. TERSIGNI:

Q I am saying, at that meeting which you were asked to vote, do you recall Mr. Haire making any statements on the question of whether the it really doesn't matter to this lawsuit. I am trying to get on. The question he is trying to find out, if the question of ratification of the settlement of the Goldman Sachs action was ever put to the board, and you don't so far know whether it was or wasn't.

Do you recall whether Haire spoke on it or not? If it is something you remember, yes or no, please say it. If you don't, just say that.

A. Mr. Haire spoke about this subject at some board meeting.

Q. Tell us what he said.

A. I can't tell you that.

Q. Was he in favor of it or against it?

MR. POLLACK: It? What is it?

MR. TERSIGNI: The settlement.

MR. POLLACK: What settlement?

I object to this as absolutely outside the scope of discovery.

Q. Can I have an answer?

MR. SOUTHER: I will direct him not to answer. This is beyond this lawsuit issue.

Q. What did Mr. Haire say at the meeting of July 24, 1974, if anything, on the subject of the disinterested quorum?

A. My recollection says Mr. Wickers --

MR. SOUTHER: Excuse me. You have to catch a plane, and you're not going to catch it if you answer questions that way.

The question is, Mr. Haire, if you recall him saying anything.

A. I don't recall Mr. Haire saying anything.

Q. Do you recall Mr. Hutchinson saying anything?

A. No, I don't.

Q. Mr. Kemmerer?

A. No.

Q. Mr. Burr?

A. No.

Q. Mr. Laun?

A. No.

Q. Mr. Martin?

A. No.

Q. Mrs. O'Connor?

A. No.

Q. Mr. Phillips?

A. No.

Q Ms. Robichaud?

A. I recall several, she asked several questions about the procedures and Judge Fuld.

Q Tell me what you remember her saying, in substance.

A. She wanted to know the gentleman's background.

Q Anything else?

A. I don't recall anything else.

Q Mr. Stevens?

A. No.

Q Yourself, Mr. Kendall?

A. All I recall about myself was that I was pretty much a listener. These were new subjects to me.

Q Other than the question by Ms. Robichaud as to Judge Fuld's background that you said you remember, and other than Mr. Wickers' presentation, do you remember anybody else having said anything on the subject?

A. I have just gone down the list of every director that was present in the room. If that will assist you.

MR. SOUTHER: You have asked him if he

recalls any specific statement that was made by any of those people. The witness has said no.

MR. TERSIGNI: I have asked him what I said to him. I don't recall saying any specific statement. I asked him what he recalls having been said by any of these people and he said he remembers nothing other than what he said.

A. Nothing ~~outstanding~~ stands out.

Q. Other than what Mr. Wickers said, do you have any recollection of anybody else there saying anything on this subject other than the question by Ms. Robichaud as to the judge's background?

A. Nothing stands out.

Q. You felt you were a junior member of the board, and that you should be a listener; is that right?

MR. SOUTHER: I object to that. The man has said nothing in particular stands out among the people who spoke during the meeting and among the discussion. You are trying to turn that around to point out that only Wickers and Robichaud spoke. That is not what the man's testimony is. If you want a fair record, you shouldn't be saying that.

Q Did you feel, as a junior member of the board, your role should be that of a listener?

A. It was a time to gather facts and information.

Q Did you feel you needed facts and information before you could make a decision as to whether or not the suggested procedure was proper, it should be followed?

A. Yes.

Q How long did it take before you made up your mind?

MR. SOUTHER: To do what?

MR. TERSIGNI: On this subject.

MR. SOUTHER: By "subject," would you please be precise?

Q Did Mr. Wickers make a proposal in his presentation?

A. Not a proposal.

Q Did someone at the meeting suggest there should be a disinterested quorum that should do something?

A. Someone suggested that a disinterested quorum should decide whether it should or should not do something.

Q Was that Mr. Wickers?

A. I cannot tell you it was Mr. Wickers.

Q And you felt you should have facts and information in order to make up your mind on whether you would vote yes or no on that?

MR. SOUTHER: Vote yes or no on what, on whether there should be an inquiry by the five?

MR. TERSIGNI: Yes.

A. There was no vote.

Q Did you understand you were being asked to vote on this?

MR. SOUTHER: To vote on whether five should go forward and make a decision subsequently?

Q Did you understand you were being asked to vote on whether or not there should be a disinterested quorum which should make the decision after consulting with independent counsel as to what further action, if any, the Funds should take with respect to the Lasker action?

MR. POLLACK: I object to the form of

the question.

MR. TERSIGNI: I read it from the minutes practically.

Q Go ahead and answer.

A. Would you read that again?

MR. SOUTHER: Look at the minutes.

MR. POLLACK: Why can't it be a simple question?

I think the problem is with the form of your question. It is very hard to follow on.

Q Did you understand you were being asked to vote on this question?

A. What I understood is that the independent quorum would consult with independent counsel and we agreed to consult with independent counsel, and after consulting with independent counsel, to make a determination as to whether we felt, in the interest of Fund shareholders there was an appropriate action for us to take.

Q Are you finished?

A. Yes.

Q My question, Mr. Kendall, is, at the meeting of July 24, did you understand that you, as a director, were being asked to vote whether or not a quorum of disinterested directors should be designated to make this inquiry to consult with counsel and to make a decision on this litigation?

Did you understand you were being asked to vote on whether that should be done?

A. We were being asked --

MR. SOUTHER: Object to the form of the question.

A. We were being asked to vote, one, on whether we were willing to undertake the exploration, number two, subject to independent counsel, and only after that was that third part of your thing to be considered. See my statement at page 160 of this transcript.

Q Did you vote at this meeting on that question?

A. Yes. See my statement at page 160 of this transcript.

Q How did you vote?

A. I agreed to proceed to consult with independent counsel on the matter.

Q Did you vote that after consultation with independent counsel, the quorum of which you were one, should make a decision as to what further action, if any, the Fund should take?

A. You have the decision before the counsel.

I told you, factfinding, fact gathering and that was the posture.

Q Did you vote at this meeting that after the quorum consulted with counsel, and did their factfinding, that they should go ahead and make a decision as to what further action, if any, the Fund should take?

MR. SOUTHER: I object to the form of the question.

You have asked the witness what happened, and you have the minutes.

A I am going to give you the same answer. I will give you the same answer that I just gave you, which is, we voted that this was a procedure that was in the interest of the shareholders that we should consult with the best available outside counsel; that we should after that take whatever necessary actions. See my statement at page 160 of this transcript.

Q Did you feel --

A But until that counsel, it was an open item and issue in my mind.

Q Did you feel you had all the information and facts you needed to cast the vote that you cast at that meeting?

A. The way I understood the vote, yes.

Q. Why did you believe that this suggestion was in the best interest of the shareholders?

A. The Lasker case was an issue before, of unfinished business, before the Fundamental Fund. The shareholders had interest in this. We had a number of people who now represented the shareholders, and I think we had a responsibility to review the present state -- condition, implications, costs, benefits, et cetera, et cetera, of that particular action, and, as a consequence, I thought it was, the clock was ticking and it was prudent to look into and get the best advice we could on the subject.

Q. Why did you believe that the proposal made by Mr. Wickers, and outlined by Mr. Wickers, was the best way to proceed?

MR. SOUTHER: Object to the form of the question.

The witness testified Mr. Wickers did not make the proposal.

MR. TERSIGNI: Who made the proposal?

MR. SOUTHER: He said it was not a proposal, but a suggestion came up.

MR. TERSIGNI: Who made the suggestion?

MR. SOUTHER: He said he doesn't recall that, either.

BY MR. TERSIGNI:

Q Do you remember who made the suggestion?

A. I cannot tell you who made the suggestion.

Q Whoever made it, whoever made it, why did you think that that suggestion was in the best interest of the stockholders as opposed to some other method of procedure?

A. The clock was ticking. You had to start someplace. We elected to go out for professional assistance ~~groups~~. If this wasn't, we'd find out.

Q Who suggested Judge Fuld?

A. A number of names were set forth. There were discussions.

MR. SOUTHER: He didn't --

MR. TERSIGNI: With all due respect, you keep saying, "Let him answer." I would like a responsive answer.

Q My question is who, if you know, selected Judge Fuld?

A. I don't know who selected Judge Fuld. See my statement at page 160 of this transcript.

MR. SOUTHER: Doesn't the minutes say?

Judge Fuld.

MR. TERSIGNI: Can I have the minutes back?

BY MR. TERSIGNI:

Q Do you know who suggested Judge Fuld as outside counsel?

A I don't know who suggested Judge Fuld. See my statement at page 160 of this transcript.

Q Do you recall Mr. Wickers bringing up his name in the course of his presentation?

A There were --

Q My question is, do you recall Mr. Wickers mentioning his name in the course of his presentation?

A Mr. Wickers did mention his name in the course of his conversation.

Q Do you recall Mr. Wickers saying, in substance, that it had already been determined that Judge Fuld was available for this assignment?

A I believe that's correct.

Q Do you know who consulted with Judge Fuld in that regard?

MR. SOUTHER: When?

MR. TERSIGNI: Obviously prior to July 24.

A. No.

Q. It wasn't you, was it?

A. No.

Q. Was it any other member of the disinterested quorum, to the best of your knowledge or information?

A. I do not know.

Q. Was it Mr. Wickers?

A. I do not know.

Q. Mr. Haire?

A. I do not know.

Q. Did any of the quorum ask who was going to pay Judge Fuld?

A. I do not remember.

Q. Did that occur to you at this meeting?

A. I don't know that I discussed the question of compensation.

Q. Did it occur to you who would have to pay for Judge Fuld?

A. I do not recall.

MR. FRIEDMAN: I object to the characterization and all these questions that matter of Judge Fuld had already been decided.

Q. What other names were suggested at the meeting as outside counsel, possible outside counsel other than Judge Fuld?

A. There were several others, and I knew none of them. I had heard the name, Seymour Whitney North, or something like that. ~~I better not embarrass the guy, but --~~

Q Did you vote on him?

A. There were no votes.

Q How did you vote on him?

A. There were no votes.

Q You voted on Judge Fuld, didn't you?

MR. SOUTHER: Object to the form of the question.

A. We did not vote.

Q Let me call your attention to the minutes. "A discussion ensued among the five directors following which the secretary," who, I take it, is Mr. Wickers, "was instructed to contact Judge Fuld and request that he review all relevant aspects," and so on and so forth.

Now, did the quorum take a vote on whether this instruction should be given?

A. The secretary was instructed to find out if this particular jurist, because of the time pressures, et cetera, was available.

Q He already told you he was available; Mr. Wickers told you he was available, and he was instructed to contact --

A. It was not that clear to me he was available.

Q Just a minute.

The minutes say, "That the secretary stated," I am reading from the minutes, "that Judge Stanley H. Fuld, Judge of the Court of Appeals, State of New York, had indicated is available to consult with and advise the directors if they so desire. A discussion ensued among the five directors," of which, I assume, you were one, "following which the secretary was instructed to contact Judge Fuld and request that he review all relevant aspects of the Fund's purchase," and so on and so forth.

Now, was that instruction given, or wasn't it?

A. That instruction was given.

I do not regard that as a vote.

Q Who gave the instruction?

A. It was the consensus of the five of us.

Q Did you take a vote among the five?

A. We did not take a vote.

Q. How was the consensus arrived at?

MR. SOUTHER: I object to that.

It's obvious how it was.

A. Discussion.

Q. Is it your testimony there was no vote taken on this?

A. Relative to whether Judge Fuld would be hired, if your definition of "vote" is all in favor, raise your hand, this and that. That is not the way it happened. There was a discussion of the alternative. A discussion of various people availability with a 15-day or some very quick time slot there.

Knowing we couldn't reconvene this group of people from around the country, we told the staff, the secretary of the Fundamental Fund to use his best efforts to proceed and let us know whether this was possible.

Q. Was there a consensus reached that it should be Judge Fuld that should be consulted and not Whitney North Seymour?

A. That the first approach should be made to this gentleman.

Q. And not Seymour, right?

A. Those are your words, counsellor.

Q What were the other possibilities you considered besides Mr. Seymour?

A. I can't remember the names.

Q Was it your view, as a director, that it should be Judge Fuld and not Mr. Seymour?

MR. SOUTHER: I object to that.

A. You're making something -- your putting words in my mouth that are not mine.

Q Was it your view that it should be Judge Fuld that should be consulted rather than Mr. Seymour?

MR. SOUTHER: The witness speaks, and the minutes testify, it should be Judge Fuld. What more do you want? There was no formal vote.

MR. TERSIGNI: I want an answer to my question.

Q My question is, was it your view it should be Judge Fuld and not Mr. Seymour?

MR. SOUTHER: I object to that. There is no foundation for the fact that there was ever a selection of this one as opposed to that one. That's the advice of your question, Mr. Tersigni, which I think you are aware of.

Q Did you have a view at this meeting whether it should be Judge Fuld to be consulted as opposed to Mr. Seymour?

A. That was never an issue of discussion, debate.

Q Was it ever discussed by anyone at this meeting whether it should be Judge Fuld that was consulted or some other attorney?

A. Yes.

Q What discussion was there on that subject?

A. A number of names of potential legal counsel were discussed, described. The qualifications, availability, et cetera, may well have been discussed, and a consensus was arrived at by these five membered quorum that the first approach should be made to Judge Fuld.

Q Did you express the view? Did you, Mr. Kendall, express the view that the first approach should be to Judge Fuld?

A. I did not express the view.

Q The answer is no?

MR. SOUTHER: He's answering the question.

MR. TERSIGNI: My answer calls for a yes or no.

We'll be here forever if he's going --

MR. SOUTHER: You just asked the same question over and over.

A. I did not express the view. I agreed with the other four members that this would be the appropriate course of action.

Q. Did Mrs. O'Connor express the view?

A. I don't know.

Q. Did Ms. Robichaud express that view?

A. I don't know.

Q. Did Mr. Stevens express that view?

A. I don't know.

Q. Did Mr. Laun express that view?

A. I don't know.

Q. You don't know who expressed it, then?

MR. SOUTHER: You have asked the questions 100 times.

The witness has testified that the minutes are accurate in that the five of them reached a consensus and instructed the secretary to contact Judge Fuld.

I think you have exhausted the subject.

Let's go to something else.

BY MR. TERSIGNI:

Q. Mr. Kendall, was Mr. Haire present throughout this discussion?

A. Yes.

Q. Did anybody ask him what he thought?

A. I don't remember.

Q. What about Mr. Hutchinson?

MR. SOUTHER: You don't remember whether he did or not, or you don't remember anybody asking him?

MR. TERSIGNI: I think he said he doesn't remember.

A. I don't remember that anybody asked Mr. Haire about the subject.

MR. SOUTHER: All right.

Q. Do you remember anybody saying anything on this subject other than Mr. Wickers and the one question that Ms. Robichaud asked about Judge Fuld's background?

MR. SOUTHER: Are you asking for a specific statement or do you remember whether anybody talked?

MR. TERSIGNI: Do you remember anybody

his testimony and then I'd like to know --

MR. SOUTHER: I'd be happy to let him complete it.

MR. TERSIGNI: I can present -- you'd like to move on. Would you continue, Mr. Kendall?

A. Any number of comments were made on the area of outside counsel.

Q. Other than Mr. Wickers and Ms. Robichaud, about which you have already testified, can you recall any comment made by any other person present in that room?

A. Any number of comments were made, and I can't recall the specifics --

Q. It could have been Mr. Haire?

MR. SOUTHER: I object to that.

Q. Would you answer, please?

MR. SOUTHER: He's already answered the question.

MR. TERSIGNI: Could it have been Mr. Haire?

MR. SOUTHER: I object to that.

MR. TERSIGNI: Direct him not to answer.

MR. SOUTHER: No.

BY MR. TERSIGNI:

Q Please answer it.

A. I can't tell you yes or no.

Q Can you tell me yes or no with respect to Hutchinson?

MR. SOUTHER: Is this the narrow question of which counsel to be selected can you tell us whether that is the question?

MR. TERSIGNI: Yes.

MR. SOUTHER: The narrow question?

MR. TERSIGNI: It's not such a narrow question; it's a question of counsel to be selected. Whether it's narrow or broad --

MR. SOUTHER: There are a lot of questions discussed there, as you well know, whether there should be counsel, and there is a narrow question as to which counsel should be selected.

The witness said the five of them talked about and reached a consensus. You are now asking if he remembers anybody else in the room making a comment.

MR. TERSIGNI: I am asking what I am asking. If you want it reread, I will have it reread.

MR. SOUTHER: Reread it. Reread it, please.

(Question read.)

BY MR. TERSIGNI:

Q Would you answer that question?

A I answered that one. I answered Mr. Haire.

Q Did you say yes, it could have been Mr. Haire?

MR. SOUTHER: He didn't say that. What did he say? He answered it.

(Answer read.)

Q With respect to the other directors present, other than the five quorum directors, would your answer be the same?

A My answer on Hutchinson, is that what you asked me? I don't recall Mr. Hutchinson saying anything on this.

Q Any of the other directors, other than the five, other than the five quorum directors?

A Same answer on all the rest of them.

Q All right.

At this meeting, did anybody say that

there had been an early opinion obtained from special counsel with respect to what rights, if any, the Fund might have against Anchor in 1970?

MR. SOUTHER: Would you read it back.

(Question read.)

Q Can we get an answer.

A. No.

Q Are you aware of whether or not special counsel had been asked, in 1970, to give an opinion with respect to what rights, if any, the Funds might have against Anchor and others with respect to the Penn Central investment?

MR. SOUTHER: I object to the form of the question.

Q Would you answer the question, please?

A. Are we talking about a particular meeting?

Q In or about October of 1970. That's what we're talking about.

A. No.

Q I'm asking you now, do you know, do you know whether or not special counsel had been asked to give an opinion in 1970 on the subject that I indicated?

A. Your earlier question is reference to what was going on at the July 24 meeting?

Q. Yes.

A. You asked me whether I was aware of something about special counsel at that particular meeting.

Q. Yes.

A. My answer is no.

Q. I am asking you now, do you know as of today, whether or not special counsel, in 1970, had been asked to advice the Fund with respect to the Fund's rights in connection with either purchase of Penn Central commercial paper?

A. Can you be more specific in identifying this special counsel?

Q. Let me read to you. I will be as specific as I can. I'll read to you from the affidavit of Leonard Joseph, who is a counsel in this case representing a number of the outside directors. He filed an affidavit in this action, which states, among other things, as follows;

"As shown in the affidavit of Charles F. Phillip, submitted in support of this motion at a regularly scheduled board meeting of the Fund on

October 28, 1970, special counsel to the Fund reported to the board of directors and gave his advice with respect to the Fund's rights in connection with it's purchase of Penn Central commercial paper."

MR. SOUTHER: What's the question?

Q Are you aware of the opinion or advice that special counsel gave?

MR. SOUTHER: Back in the fall of 1970?

MR. TERSIGNI: Yes.

A. I have not read that opinion.

Q Nobody mentioned it to you at the July 1974 meeting?

A. I can't recall it being mentioned at that meeting.

Q Is it something you want to see or would have wanted to see in connection with the work you did as a member of the disinterested quorum?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

MR. SOUTHER: Excuse me sir.

You are saying it's something you wanted to see. That assumes there is something in so far outside the scope of the discovery set forth by Judge Werker, that I must say that I continue to object and ask the counsel for this witness to consider instructing the witness not to answer.

BY MR. TERSIGNI:

Q Can I have an answer to my question?

MR. SOUTHER: What's your question?

MR. TERSIGNI: Read back my question.

(Question read.)

MR. SOUTHER: I think it's totally irrelevant what some special counsel may have advised the board as to its rights in connection with the Penn Central paper, as you have just read that back, in 1970.

I think the question is, was Mr. Kendall satisfied with the advice and information he got in '74-'75. I am going to instruct him not to answer about something that occurred five years before.

BY MR. TERSIGNI:

Q Now I would like to read to you from the affidavit of Mrs. O'Connor. She was a member of your quorum; correct?

A Yes.

Q "On October 28, 1970, at a regularly scheduled board meeting which I attended, special --" I'm reading from the affidavit of Charles F. Phillips. I inadvertently stated what I was about to read from the affidavit of Mrs. O'Conner. It is actually the affidavit of Charles F. Phillips that I am reading from.

"On October 28, 1970, at a regularly scheduled board meeting which I attended, special counsel reported to us and advised us with respect to the Fund's rights in connection with it's purchase of Penn Central commercial paper, the board of directors of the Funds considered the rights of the Fund in light of counsel's advice against Goldman Sachs & Company, and others, including Anchor."

What I am asking you, Mr. Kendall, is this, if you had known that in 1970 special counsel had given the advice which is referred to to the board of directors, and that on the basis of that advice the board had given consideration to what action should be taken against Goldman Sachs and others, including Anchor, would you have wanted to see what that advice was, what special counsel, in

BY MR. TERSIGNI:

Q Do you know who special counsel was that reported to the board on October 28, 1970?

A I do not.

MR. TERSIGNI: I call for that information, Mr. Souther.

I also call for a copy of any written advice given by that special counsel, or any other writing relating to that advice, including minutes of the board of directors meeting of October 28, 1970.

I also want to make it clear for the record that if this witness testifies that it's something he would have considered relevant, that I think that makes it ipso facto relevant to what was done here and what was purported to be a good faith exercise of judgment. Particularly from the point of view why that was not made available to Mr. Kendall.

BY MR. TERSIGNI:

Q Do you know when Mr. Souther's firm was obtained as litigation counsel?

A Shortly after this meeting.

Q Shortly after July 24, 1974?

MR. SOUTHER: The question is do you know or don't you know.

THE WITNESS: No.

MR. SOUTHER: Then why don't you just say it.

MR. TERSIGNI: Particularly when it's wrong, his counsel's points.

MR. SOUTHER: The man came on the board in the middle of 1974; he testified he learned there was a lawsuit that was dormant, and what you knew and he doesn't know, had been pending a year and a half.

Obviously, somebody had been retained to represent the Fund in that lawsuit at the time. What difference does it make?

MR. TERSIGNI: It certainly is not beyond the realm of possibility that this gentleman, even though he joined the board in '74, might know when you were retained. I asked him that question, and he gave an answer which was wrong. You immediately have to make a speech about it.

MR. SOUTHER: I am saying to the man

don't guess. "If you know, you know. If you don't know, you don't know," and it doesn't matter.

MR. TERSIGNI: You say it doesn't matter.

BY MR. TERSIGNI:

Q Do you know who selected Mr. Souther's firm?

A No.

Q Was it your understanding, as a member of this quorum, that in addition to seeking the counsel and advice of Judge Fuld that Mr. Souther and his firm were also available to you for that purpose, for the purpose of this decision that you were going to make?

A Yes.

Q So that it was your understanding you had two lawyers, as it were, that were going to advise and consult with you?

MR. SOUTHER: I object to the form.

Q You may answer.

A Yes.

Q Did you feel that two prestigous lawyers were required?

A. I never thought of it.

Q Do you think the Funds should be paying for two lawyers?

MR. POLLACK: I do not see how that bears on the question of the relationship between the minority directors and the Qualifications Committee.

MR. TARSIGNI: Because Mr. Haire is on the Qualifications Committee, and I --

MR. POLLACK: You must move on.

Q Would you answer the question, please.

MR. POLLACK: I don't think this witness is here to give his views. He is here to say what he knows and doesn't know, and what he did and didn't do.

MR. TARSIGNI: His views as one of the five directors in question are directly relevant. Indeed, they're the basis on which your clients moved to dismiss this case.

MR. POLLACK: His views, if he had any at the time, might be.

You are asking him today whether he thinks such and such is the case.

BY MR. TARSIGNI:

Q Would you answer the question: Do you believe that the Funds should have had to pay for two prestigous lawyers instead of one?

A I believe it's my responsibility to get the best counsel and advice I can.

Q And that meant two lawyers in this case; is that right?

A And Judge Fuld seemed to be an appropriate candidate to give that counsel.

Q My question is, why did you believe it was necessary to get Judge Fuld when you already had Mr. Souther?

MR. POLLACK: I think this is utterly an inappropriate question.

MR. SOUTHER: Yes, I object to that, and direct him not to answer.

Q Was there any discussion among the disinterested quorum as to who would pay for these two lawyers?

A May I ask you if you are talking about at the July meeting?

Q At any time, either at the July meeting or subsequent, and my question is, did anybody, among the five of you, raise the question, who was going to pay for Mr. Souther's firm and Judge Fuld in connection with their advising and consulting with your quorum, and so forth, and how much will they charge us, and so forth?

A. There was no discussion in July. Subsequently there was discussion, and subsequently we determined that the Fund would pay Judge Fuld's bill.

Q What about Mr. Souther's firm to the extent that his firm advised the quorum on this question?

A. That is before my time.

Q When was the discussion with respect to the Fund's paying for Judge Fuld's bill?

A. I cannot remember exactly when.

Q At any rate, it was after the decision had been made by the quorum?

MR. SOUTHER: After which decision?

Q January 6, 1975 decision.

A. We paid the bill after that.

Q When did you have the discussion?

A. Before that.

Q How did the discussion come about?

A. Very simply a recognition that obvious charges were going to be made and we had to recognize that.

Q Who raised that question?

A. I cannot tell you which member raised it.

Q Was it one of the quorum?

A. Yes.

Q You don't recall which one?

A. No, sir.

Q What position did you take on this?

A. That legal bills ought to be paid.

Q By the Fund?

A. In this, yes.

Q As opposed to Mr. Haire, Anchor?

MR. SOUTHER: I object to that. There is no evidence that was discussed, raised, suggested or considered.

Q Why did you believe this should be charged, paid by the Fund as opposed to, by Anchor or Mr. Haire or any --

MR. SOUTHER: I object to the form of the question.

The question was simply the Fund retained them.

If you want to find out if there was any discussion about whether anybody else should pay it, perhaps that is relevant, but what he now considers or may have considered then that you have suggested to him is irrelevant.

MR. TERSIGNI: He says he made a decision on that subject as one of the quorum, and I would like to know why he believed that the bill ought to be paid by the Fund as opposed to Anchor or Mr. Haire or the other defendants.

MR. SOUTHER: We haven't established if there was any consideration given as to whether anybody else should pay.

I object.

MR. TERSIGNI: Are you directing him not to answer?

MR. SOUTHER: I am asking you to rephrase the question, to elicit proper testimony.

BY MR. TERSIGNI:

Q Why did you believe that the Fund ought to pay this bill as opposed to Anchor or Mr. Haire or the defendants?

MR. SOUTHER: I object to the question on the same grounds.

MR. TERSIGNI: Do you direct him not to answer?

MR. SOUTHER: No.

Q. Your counsel is not directing you not to answer, so you may answer.

A. The quorum was working in the interest of the shareholders of the Fund. There were significant issues involved and these charges, legal fees, or whatever, were necessary for this group to function in the interest of the shareholders.

MR. SOUTHER: Let's take a short break.

(Recess taken.)

MR. TERSIGNI: We're going to adjourn Mr. Kendall's examination at this point so that Mr. Kendall can fly back to Milwaukee, and he has very kindly consented to resume his testimony in March, and we'll have to agree on a date, but hopefully it will be at or about the time of the Fund's next meeting which should be around the latter part of March.

Is that fair?

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

---x

HOWARD M. LASKER, et ano., :

Plaintiffs, :

-against- :

HARRY G. BURKS, JR., et al., :

Defendants. :

---x

Continued deposition of LEON T. KENDALL, taken by Plaintiffs, pursuant to decision by the Court, held at the offices of Messrs. Seward & Kissel, 63 Wall Street, New York, New York, on March 24, 1976, at 9:45 a.m., before David J. Feldman, a Certified Shorthand Reporter and Notary Public within and for the State of New York.

Certified Shorthand Reporters

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* * *

LEON T. KENDALL, recalled as a witness by the Plaintiffs, having been previously duly sworn, was examined and further testified as follows:

MR. SOUTHER: Before you start, Mr. Kendall wanted to say something.

THE WITNESS: Mr. Tersigni, in reviewing my transcript of the last session, I noticed two points that I wish to call to your attention to clarify my testimony

First, on pages 118 to 121, you asked me about my vote on the formation of the disinterested quorum and on the retention of Judge Fuld. I adopted your language in my responses, but as I indicated to you on pages 118, 127, 128, 129, there was no vote in the sense of people raising their hands and being counted for or against.

We discussed this matter and the five of us reached an agreement of what to do by common consent.

Second, on pages 123 to 125, you asked me who suggested Judge Fuld. And then who selected Judge Fuld. I did not understand your questions. The name of Judge Fuld was brought to our attention by Mr. Wickers. And it was, of course, the five members of the disinterested quorum, only these five, who selected Judge Fuld.

MR. TERSIGNI: Is that it?

THE WITNESS: Yes.

EXAMINATION BY MR. TERSIGNI:

Q Mr. Kendall, have you read from a prepared statement of some kind?

A I have.

Q May I see it, please?

A Yes.

Q Mr. Kendall, who prepared this statement?

A It was prepared this morning by myself and --

Q And?

A And my counsel.

Q Is that Mr. Souther?

A Yes.

Q Was it your suggestion that you wanted to make some corrections or was it counsel's suggestion?

A It was my suggestion.

Q And you went over the language together?

A Yes.

Q And arrived at a prepared statement which you've now read into the record; is that correct?

A Yes.

Q Had you read the transcript of your testimony of February 26th prior to today?

A Yes.

Q When did you read it, sir?

A Over the last week.

Q When did you receive the transcript, if you recall?

A Approximately a week ago.

Q Sent to you by Mr. Souther?

A Yes.

Q The subject matter of this statement which I will not bother to mark because you've read it literally into the record, the subject matter of this statement, was that something that you brought to the attention of Mr. Souther or which Mr. Souther brought to your attention?

A I brought it to Mr. Souther's attention.

Q Are there any other additions, corrections or changes to the testimony which you gave on February 26th, which you've reviewed and would like to make?

MR. SOUTHER: Well, now, on that score, I don't want it to be thought that this is an

606A

exhaustive review of the transcript, or that Mr. Kendall has given every correction. I mean, there are others, Mr. Tersigni, that he pointed out to me, where things were not quite exactly right or words were wrong and things of that nature. These were the two which he thought were substantive enough in the confusion and he wanted it to be brought to your attention promptly at the outset so that you could inquire if you so chose.

But there may be other changes he may want to make.

MR. TERSIGNI: He obviously has the right to make changes up to the time that he signs the trasncript.

MR. SOUTHER: Right.

Q What I'm asking the witness now is, having read your testimony, are there any other substantive corrections, additions, deletions or changes which occur to you should be made?

A Not at this moment.

MR. TERSIGNI: I'll give you back this statement that you prepared with your counsel.

Off the record.

(Discussion off the record.)

Q Mr. Kendall, between the board meeting of July 24th and the time that Judge Fuld prepared his report, did you have any contacts with Judge Fuld?

A No.

Q As far as you know, did any other members of the quorum or anyone else on behalf of Fundamental have any contacts with Judge Fuld during that period?

MR. SOUTHER: Excuse me, Mr. Tersigni. The period is July 24 and?

MR. TERSIGNI: The time that Judge Fuld's report was prepared, which I take it was at or about the beginning of December, 1974.

MR. SOUTHER: You mean the first report, December 5th?

MR. TERSIGNI: Yes.

MR. SOUTHER: Okay.

Q Do you understand that, Mr. Kendall?

A Yes.

I have no knowledge of other contacts.

Q Was it your understanding that anyone was communicating with Judge Fuld on behalf of Fundamental during that period?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: I'll rephrase it.

Q Did you have any understanding as to whether anyone on behalf of Fundamental was communicating with Judge Fuld during that period?

A Our secretary, Mr. Wickers.

Q Anybody else?

A Mr. Wickers is the only one I can ~~speak to.~~ recall.

Q And what was your understanding as to the contacts, if any, that Mr. Wickers was having with the judge during this period?

A Mr. Wickers advised the quorum members as to Judge Fuld's progress from time to time.

Q Do you know whether he met with Judge Fuld during this period?

A I do not.

Q What was your understanding as to how he was carrying on these contacts with the judge?

MR. SOUTHER: I object to the form of the question, and I don't think there is any evidence that there were contacts, plural. I think your initial question was was there any contact, singular.

Q Do you know whether there was one contact or more than one contact?

A I do not.

Q What was your understanding at the time with respect to what Mr. Wickers was doing with respect to communications or contacts with Judge Fuld?

MR. SOUTHER: Objection to the form of the question.

A Mr. Wickers had a responsibility to advise the disinterested quorum of the progress that Judge Fuld was making in preparing his materials, and to schedule a meeting with Judge Fuld.

Q Who, if anyone, assigned that responsibility to Mr. Wickers?

A He is the secretary of the fund.

Q I'm aware of that.

A The disinterested quorum looked to him to perform this administrative task.

Q My question is who, if anyone, assigned that responsibility to Mr. Wickers, if you know?

A I'd say the administrative -- or the disinterested quorum.

Q Do you recall the quorum doing that?

MR. SOUTHER: Excuse me. Do you mean at some time other than at the July meeting?

MR. TERSIGNI: At any time. Either before he did it or after he did it, ex post facto.

- Q Right up to today, Mr. Kendall. Do you recall the quorum ever assigning that responsibility to Mr. Wickers?

A I would say that it occurred at the July meeting.

Q And were you in favor of assigning that responsibility to Mr. Wickers?

A I have no recollection as to whether I was in favor.

Q Do you have any recollection of whether you even thought about it?

A I have no recollection whether I thought about it or not.

Q Was it your understanding, Mr. Kendall, that as a member of the quorum, you were to act in making your decision independently of Mr. Haire?

A Yes.

Q And what was the basis of that understanding?

A The fact that the disinterested quorum was not involved in the Lasker case.

Q Did anyone tell you that you should act independently of Mr. Haire?

A I don't recall that anyone told us.

Q Did you know at the time whether or not Mr. Wickers had a position with Anchor?

A I knew Mr. Wickers as the secretary of the funds.

Q Did you know whether he had a position with Anchor?

A I would assume he did.

Q Well, did you know it or didn't you know it?

A I'm concerned about the date.

Q Between July 24, 1974 and December 5, 1974, did you or did you not know whether Mr. Wickers had a position in Anchor?

A In July I'm not sure. By December I would say yes, I knew Mr. Wickers had a position.

Q What was your understanding as to what position he had at Anchor?

A Mr. Wickers had administrative legal responsibilities.

Q Was he a subordinate of Mr. Haire at Anchor?

A Yes.

Q Did he report to Mr. Haire in that capacity?

A I do not know that.

Q Did he work with Mr. Haire at Anchor?

A I do not know that.

Q When you found out that he had a position at Anchor, in view of your understanding that you were to act independently of Mr. Haire, did you believe it was appropriate that Mr. Wickers should serve as an intermediary with Judge Fuld?

A I saw nothing inappropriate in that action.

Q Do you know whether he discussed any of these matters with Mr. Haire, "he" being Mr. Wickers?

A I do not.

Q Did you ever tell him not to?

A I did not.

Q Did there ever come a time when you personally, Mr. Kendall, had some communication with Judge Fuld?

A Yes.

Q When did that occur for the first time?

A On December 18th.

Q 1974, I take it?

A 1974.

Q And was that at the quorum meeting which occurred on that day?

A Yes.

Q Was it during the course of that meeting?

A Yes.

- Q Do I understand correctly that prior to the commencement of that meeting, you had never previously spoken or otherwise communicated personally and directly with Judge Fuld?

A Yes.

Q Do you know whether prior to the commencement of that meeting any of the other four members of the quorum had had any personal communication of any kind with Judge Fuld?

A Mr. Stephens did.

Q And what form did that communication take?

A I recall a letter, I believe, between the two.

Q Was it a letter from Mr. Stephens to Judge Fuld or vice versa?

A A letter from Mr. Stephens.

Q To Judge Fuld?

A To Judge Fuld.

Q Was it addressed to Judge Fuld?

A I do not recall.

Q When did you first learn of that letter?

A Some time after December 5th.

Q 1974?

A 1974.

Q Did the quorum meet on January 6, 1975?

A It did.

Q Was a vote taken at that meeting?

A Yes.

Q Was the vote taken on a formal resolution?

A Yes.

Q Who proposed the resolution?

A One of the other members of the quorum. I believe Mr. Laun.

Q How was the vote taken?

A A resolution was proposed, seconded and people responded by voice.

Q Prior to that vote being taken, do you recall seeing a memo addressed to the quorum dated January 6, 1975 and signed by Eugene P. Souther?

A A memorandum from Mr. Souther?

Q Yes, sir. Bearing that date.

A Yes.

Q You have a recollection of that memo?

MR. SOUTHER: As having seen it or of its contents?

MR. TERSIGNI: Having seen it prior to his voting and the vote being tabulated and so forth.

A Yes.

Q When do you recall seeing that memorandum for the first time?

A At that evening.

Q When you say "that evening," you don't mean the evening after the vote?

A No.

Q You mean the evening before the vote?

A No. It was during the meeting.

Q It was during the meeting of meeting of the quorum?

A During the meeting.

Q On January 6th?

A Yes.

Q And that was the first time you saw that memorandum?

A Yes.

Q Were you given a copy at that time?

A Yes.

Q Who gave it to you?

A Mr. Souther.

Q Did he simultaneously give copies to the other four directors or other three directors?

A Yes.

Q Three directors, Mr. O'Connor was not there?

A Yes.

Q Is that right?

A Yes.

Q To your knowledge, had they seen the memo prior to that time?

A Not to my knowledge.

Q Do you know what the occasion for the preparation of that memorandum was?

A Several committee members -- I'm sorry, correct that, members of the disinterested quorum had requested information about the procedures through which a fund advisor or management group might be changed.

Q Is that your answer?

A Well, and --

Q I don't mean to suggest that you should elaborate. I just, since you pause frequently, I don't want to cut you off, because counsel will get all upset.

A Yes.

Q Who raised those questions?

A I can't remember specifically which of the individual members raised the question.

Q Was it more than one member?

A This subject was a topic of discussion.

Q Was it more than one member

A I can't recall whether it was more than one member or not.

Q Did you raise any of these questions?

MR. SOUTHER: When you say "any of these questions" --

MR. TERSIGNI: I think the witness said questions, I believe he used the plural, I may be in error, but I thought he said questions were raised with respect to the subject of termination.

MR. SOUTHER: Okay.

MR. TERSIGNI: That's my recollection of his testimony.

MR. SOUTHER: Okay.

Q And my question to you, sir, is, not knowing whether it was more than one director, are you able to tell us whether you raised any of these questions, you personally?

A I cannot tell you that I raised this question.

Q I'm sorry, I don't understand that answer. Are you saying you did not or you don't remember whether you did or you didn't?

A I don't remember whether I was the one that raised this question.

Q Was this memorandum, which, for the record has been marked as Plaintiffs' Exhibit 4 and as Mr. Friedman called to my attention one day, Plaintiffs' Exhibit 19 for identification, when you received this memorandum, what, if anything, did you do with it or to it?

A I read the memorandum.

Q Right away?

A In the course of the meeting.

Q Did the other three directors read the memorandum at the same time, or more or less at the same time?

A Yes.

Q Was the memorandum distributed at the beginning of the meeting?

A I cannot recall when at the meeting it was distributed.

Q Do you recall approximately how long the meeting lasted?

A Three to four hours.

Q Do you recall how long you and the other three directors spent reading Mr. Souther's memorandum?

A No.

Q Do you know who, if anyone, asked Mr. Souther to write this memorandum?

A I do not recall who asked Mr. Souther to write this memorandum.

Q Was it one of the quorum?

A It would have been -- it would be a member of the quorum.

Q Did you have any procedure after you were appointed chairman on December 18th, as to how inquiries were to be made to counsel?

A We agreed at the December 18th meeting that questions from members of the quorum would come through me to Judge Fuld or Mr. Souther.

Q And was that procedure followed here?

A That procedure was followed. Whether this request came out of the December 18th meeting or -- which I think it did -- I will say I think this came out of the December 18th meeting.

Q Well, this was the kind of request which, under the agreed procedure, was to be submitted to you for submission to Mr. Souther, wasn't it?

A ~~There were~~ -- Yes. This particular request, I believe, came directly to Mr. Souther within that December 18th meeting.

Q Are you saying that this question was raised during the course of the December 18th meeting?

MR. SOUTHER: Excuse me, when you say the December 18th meeting, could you break it down? As you know, it took several parts. There was an executive committee, so to speak, meeting, then a larger group; and then the quorum met with counsel and then the quorum met without counsel.

So there were four separate parts.

MR. TERSIGNI: I'm talking about the meeting of the quorum on December 18th.

MR. SOUTHER: But as I pointed out, it had four different parts and I wondered if you could help the witness by asking him.

MR. TERSIGNI: Well, maybe the witness can tell me during which part it was raised, since he just testified he thinks it was raised.

MR. SOUTHER: All right.

A It's my recollection that this subject, and the request for information, went to Mr. Souther during the portion of the meeting when we met with him and Judge Fuld with just the members of the disinterested quorum.

Q Do you have a clear recollection on that point?

A Yes.

Q Have you ever looked to see whether the making of that request or the raising of that question is reflected in the minutes of the quorum's meeting on December 18th?

A No.

Q If the question was raised during the course of that meeting, do you know of any reason why it shouldn't be reflected in those minutes?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

THE WITNESS: Would you repeat that question, please?

(The pending question was read.)

A I know of no reason why it should or no reason why it should not.

Q How long did you spend reading the memorandum of Mr. Souther prior to voting on January 6th, approximately?

A I cannot tell you how long we spent on this memorandum, specific memorandum.

Q I'm asking you now. Not necessarily the other directors. Do you understand that?

A We read -- I read this memorandum. There was discussion of this memorandum. The points in the memorandum were considerations that had a bearing. It was one of a number of factors discussed and considered.

Q Do you recall whether you read the memorandum carefully as opposed to just skimming it?

MR. SOUTHER: Well, I object to the form of the question.

Q Did you read the memorandum carefully?

A Yes.

Q You understood that this memorandum was from Mr. Souther, did you not?

A Yes.

Q And you understood that Mr. Souther was an attorney and writing this memorandum in his capacity as an attorney?

MR. SOUTHER: I object to the form of the

question.

MR. TERSIGNI: You may answer.

A Yes.

Q And you gave consideration to the contents of this memorandum prior to casting your vote?

A Yes. Along with many factors.

Q Did you consider the contents of this memorandum to be of importance in connection with the matter of your voting?

MR. SOUTHER: Mr. Tersigni, when you say "contents," do you mean everything that is in it or some of the things or the general substance or the question that it sought to answer?

MR. TERSIGNI: I think contents is contents. We've marked it, and it's very clear what contents -- at least, to me it's very clear what it means.

MR. SOUTHER: If it had been clear to me I would not have asked you the question.

Q Do you understand the question, Mr. Kendall?

A Would you repeat it?

Q Yes.

Did you consider the contents of this memorandum, which has been marked as an exhibit, to be of importance to you in connection with your voting at this meeting?

MR. POLLACK: Objection to the form of the question.

A The memorandum was one of a number of factors that we reviewed and considered at the meeting.

Q And did you consider the memorandum in connection with the vote on the resolution which you've previously mentioned?

A The purpose of the meeting was to come to a judgment. This memorandum was one of a number of elements, factors. It's not my recollection that it was the critical element by itself.

Q I call your attention to page 2 of the minutes which have been marked Plaintiffs' Exhibit 17 for identification, bottom of the page, and I ask you whether that refreshes your recollection whether or not that memorandum was written in response to questions which you personally conveyed to Mr. Souther?

MR. POLLACK: The question is whether this refreshes his recollection? Is that the question?

MR. TERSIGNI: Read the question to Mr. Pollack.

(The requested portion of the record was read.)

MR. FRIEDMAN: I'm sorry, I'd like to hear the question again.

MR. TERSIGNI: Read the question again for Mr. Friedman. We're proceeding counterclockwise today.

(The requested portion of the record was reread.)

A These minutes indicate that Mr. Kendall asked Mr. Souther to give a memorandum outlining the necessary procedures, et cetera. This, however, does not mean that it did not occur necessarily at the December 18th meeting. After Mr. Souther and Judge Fuld left the meeting, the committee members were together for a brief period. It can still be my recollection that that is the time that we visited on this subject.

Q That's not my question, Mr. Kendall. My question is do these minutes refresh your recollection as to whether or not it was you, Mr. Kendall, who conveyed the questions to Mr. Souther which prompted Mr. Souther's memorandum?

MR. SOUTHER: I thought he was trying to give you a full answer to that.

MR. TERSIGNI: He was talking about when. When it happened. I'm not saying when. I'm asking who. Who.

A I think my previous answer, based on your showing me the minutes, is the correct one.

Q Did you convey the questions to Mr. Souther?

A The minutes say I did.

Q I know what the minutes say, Mr. Kendall. My question is did you convey the questions to Mr. Souther.

A I don't recall conveying the specific question to Mr. Souther.

Q Do you have any reason to doubt what's in the minutes?

A No.

Q Mr. Kendall, at the January 6, 1975 meeting, did you have an understanding whether the five-member quorum was acting on behalf of Fundamental Investors alone or whether the quorum was acting on behalf of all the funds in the Anchor group?

MR. SOUTHER: I object to the question. There was only one defendant in the lawsuit.

MR. TERSIGNI: There were many defendants in the lawsuit.

MR. SOUTHER: Only one fund defendant.

MR. TERSIGNI: That's all right. I'd like the witness to give me his understanding of how many funds he was acting for.

MR. SOUTHER: In doing what?

MR. TERSIGNI: Whatever it is that he did on January 6th.

MR. SOUTHER: I wouldn't let him answer a broad question like that.

MR. TERSIGNI: Are you directing him not to answer?

MR. SOUTHER: Yes. Unless you want to refine it.

MR. TERSIGNI: If you've directed him not to answer, I'll go on to my next question.

MR. SOUTHER: Fine.

BY MR. TERSIGNI:

Q As a member of the five-man quorum, the five director quorum, did you have an understanding whether you were acting on behalf of Fundamental alone or on behalf of all the funds in the Anchor group?

MR. SOUTHER: In doing what, please?

MR. TERSIGNI: I've already said, Mr.Souther, as a member of the quorum. As a member of the quorum.

- A It was my understanding we were acting as directors of Fundamental.

Q Did the four directors present at the January 6th meeting consider the question of whether or not Fundamental should terminate its advisory agreement with Anchor?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

A Yes.

Q You're not a director of the Anchor Daily Income Fund, are you?

A That is correct, I'm not a director of the Anchor Daily Income Fund.

Q Did the four directors present on January 6th consider the question of whether the Daily Income Fund should terminate its advisory agreement with Anchor?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

A Not that I recall.

Q Did those four directors on January 6th consider whether advisory contracts between any of the funds other than Fundamental and Anchor, should be terminated?

A There was discussion about all management relationships for all funds.

Q Was it your understanding that as a member of this quorum you were being asked to make a decision as to whether the Anchor Funds other than Fundamental should terminate their agreements with Anchor?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

A We focused on the relationship between the managers and Fundamental.

Q Did you understand when you were asked to serve as one member of the quorum that you were being asked to act on behalf of Fundamental, one of the funds, with respect to the Lasker action?

A Yes.

Q And did you not understand, Mr. Kendall, that the quorum was not being requested to make any decisions on behalf of any other fund other than

Fundamental?

MR. SOUTHER: I'm confused by the not's - in the questions. Would you rephrase it, please?

MR. TERSIGNI: Yes.

Q Is it not a fact that the quorum of which you were a member was not requested to make any decisions on behalf of any fund other than Fundamental?

MR. FRIEDMAN: Objection to the form.

MR. TERSIGNI: You may answer.

THE WITNESS: Can you read that to me, please.

(The pending question was read.)

A Mr. Tersigni, you still have a double negative there. I'd like to --

Q I'll rephrase it again.

The only decision that the quorum of which you were a member was asked to make was a decision on behalf of Fundamental --

MR. FRIEDMAN: I object to the form of the question.

Q -- in connection with the Lasker action. Isn't that right?

MR. FRIEDMAN: I object to the form of the

question.

MR. TERSIGNI: You may answer.

A Yes.

Q Was it ever your understanding that as a member of this quorum you were authorized to do anything on behalf of the Anchor Daily Income Fund?

MR. FRIEDMAN: I object to the form of the question also.

A Since I'm not a director of Anchor Daily Income Fund, I would say the answer is I could not perform any action on behalf of Anchor Daily Income Fund shareholders.

(Continued on page 189.)

Q And the quorum also was not asked to make any decision for any of the funds in the Anchor group other than Fundamental; isn't that right?

MR. FRIEDMAN: I object to the form of the question.

MR. POLLACK: Objection. Repetitive.

MR. SOUTHER: You've asked him the same question. I think he answered that [illegible] question the same way, that it was Fundamental and only Fundamental.

MR. TERSIGNI: Let's establish for the record that that's the answer, and I take it counsel is stipulating the answer is yes, and I'll go on?

MR. FRIEDMAN: I don't stipulate the answer is yes.

MR. TERSIGNI: Then let's get an answer.

MR. FRIEDMAN: I think the question is misleadingly phrased.

MR. TERSIGNI: Fine. Let's have an answer, please.

(The question was read by the reporter.)

A Your verb ask, a-s-k, is my problem. I don't know that anyone asked us.

We were functioning as directors and elected representatives of Fundamental Fund.

- Q Were you serving as representatives of any fund other than Fundamental in connection with your activities as part of the quorum?

A I was serving as a representative of the Fundamental shareholders as part of the disinterested quorum of the Board of Directors. I was focusing on and voting only for the shareholders of Fundamental

Q What fund?

A I was a director of Spectrum Fund, Growth Fund, several other funds. It is difficult for me to parse out these responsibilities.

Q Mr. Kendall, I'm not asking you about your responsibilities as a director of any fund other than Fundamental. I'm asking you about the quorum. That's the subject we're talking about.

Was it your understanding that as a member of the quorum, as one of the five designated members of the quorum, you were authorized to do anything other than make a decision on behalf of Fundamental with respect to the Lasker action?

MR. FRIEDMAN: Object to the form of the question.

MR. TERSIGNI: You may answer.

A We were to act for the Fundamental shareholders.

(Brief recess taken.)

BY MR. TERSIGNI:

Q Mr. Kendall, when you read Mr. Souther's memorandum on January 6, 1975, did you understand it?

A I believe I did.

Q Did you have any questions about it?

A I can't remember any specific questions.

Q Do you recall what the discussion among the directors was with respect to Mr. Souther's memorandum?

A I have no specific recollection of the discussion on the memorandum.

Q Other than that there was discussion, do you have any recollection at all of what was said on this subject?

MR. SOUTHER: I object to the form of the question.

A There was concern expressed as to whether the management group could proceed as it had been, or whether it would be -- whether it would have to be removed if various courses of action were taken.

Q When you say the management group, who are you referring to?

A The Anchor management group.

Q Mr. Souther's memorandum refers to the board of directors at various points, on page 1, for example. The very first sentence refers to "The board's inquiry."

Did you have any understanding who the members of the board referred to in that memorandum were?

A The members of the Fundamental board listed which are myself, Mr. Laun, Mrs. O'Connor, Miss Robichaud, Mr. Stephens.

Q That's the so-called quorum?

A Yes.

Q Disinterested quorum?

A Yes, sir.

Q And on page 2, Paragraph 2, what did you understand by the following statement by Mr. Souther:

"If the Board were to exercise its right to terminate the Agreement, it would have to consider whether it should exercise that right with respect to the agreements with the other six funds in the Anchor Group."

What did you understand that to be?

MR. SOUTHER: Object to the form of the

question.

A Based on our previous discussion, it was my judgment that the disinterested quorum was functioning for Fundamental.

Your question regarding the context of what "Board" means in Paragraph 2 in the context of that discussion is unclear to me.

Q Did you understand Mr. Souther's memo when you read it, on January 6th?

A I believe we were acting for Fundamental. I think the board, in the context that Mr. Souther used it here, will have to be --

Q Have to ask Mr. Souther?

A -- inquired of him. If you --

Q Did you understand --

MR. SOUTHER: I don't think he's finished.

MR. TERSIGNI: Go ahead, sir.

A I would say that one of the alternatives available in our business judgment, at least in my business judgment, put it that way, was whether under certain courses of action, whether the management group would be the best one to continue to perform necessary activities for the fund shareholders.

I think in that context, the upset, the managerial problems in getting the best decisions made on the assets of the shareholders, could well have been difficult.

As to whether we would have to then move to sever all relationships with all funds and this fund manager, some members of the committee thought we would; others didn't express themselves.

Q Did you believe it was up to the quorum to decide whether the relations --

A That issue --

Q Let me finish my question.

Did you believe it was up to the quorum to decide whether the agreements between the six other funds and Anchor should be terminated?

MR. SOUTHER: Object to the form of the question.

MR. TERSIGNI: You may answer.

A I believe that we were there -- I believed we were there to represent the interest of the Fundamental shareholders.

Q Not the six other funds? Is that right?

A My first priority was to deal with the interest of the Fundamental shareholders. That's what was on the table.

Q I'd like to repeat my earlier question:

Did you understand Mr. Souther's memorandum when you read it on January 6th?

A I think I understood Mr. Souther's memorandum in the context of the decision we had to make.

Q On January 6th, was it your understanding that the five member quorum of which you were a member was to decide whether the advisory agreements between Anchor and the other six funds in the Anchor group should be terminated?

MR. SOUTHER: Read the question back, please.

(The pending question was read by the reporter.)

MR. SOUTHER: Mr. Tersigni, I'm going to object to this question as having been asked and answered repeatedly. We've given you a lot of time to go into it and the witness has said repeatedly they were acting on behalf of Fundamental Investors only. That was the fund on whose behalf they were acting.

I think it's inappropriate for you to

Mr. Souther's memorandum, where he refers to expenses which would be imposed on the other funds in the Anchor group, and so forth.

Do you see that?

MR. SOUTHER: Can you tell us which paragraph?

MR. TERSIGNI: It's Paragraph 7. The end of the paragraph.

MR. SOUTHER: Following the sentence that deals with the expenses that would be imposed on Fundamental?

MR. TERSIGNI: Yes.

Q In addition to expenses that might be imposed on Fundamental, in voting as a member of the quorum, were you concerned about expenses to the other funds in the Anchor group?

A Our focus was on Fundamental and its shareholders.

Q Whatever your focus was, did you give consideration to expenses to other funds in the group as referred to in this memorandum by Mr. Souther?

MR. SOUTHER: Object to the form of the question because you're suggesting, without putting the sentence clearly in context, that Mr. Souther was suggesting to this group that they should give consideration to expenses that would be imposed on the other funds of the Anchor group if the boards of those funds thereafter determined to terminate those agreements as well. And that is not what the memorandum said.

MR. TERSIGNI: The memorandum is marked as an exhibit, Mr. Souther.

MR. SOUTHER: Yes, and it's a lawyer's memorandum to five laymen. And I think it's inappropriate for you to go down this line by line. I've said that before.

The man has told you the extent to which this played a part as one of a number of factors. He's told you at least ten times that Fundamental is the fund they were representing and that's the group they were thinking about. It's those shareholders, and those shareholders only, they were worrying about that night.

BY MR. TERSIGNI:

Q Did you give consideration to expenses that might result to other funds in the Anchor group?

A Not that I remember.

Q What was your understanding as to the relevance of this statement in Mr. Souther's memorandum to your decision?

MR. SOUTHER: I object to the form of the question.

MR. TERSIGNI: You may answer.

MR. SOUTHER: You haven't established that he had any understanding about that sentence.

MR. TERSIGNI: Go ahead, sir.

MR. SOUTHER: Do you know the sentence? Why don't you show it to him?

A I don't think that had any particular relevance to my decision.

Q Did you give consideration to the possibility of a proxy contest prior to casting your vote?

A I cannot remember any consideration on my part ~~to~~ of a proxy contest.

Q Did you give any consideration to Paragraph 6 of Mr. Souther's memorandum prior to casting your vote?

THE WITNESS: Would you read that question for me?

(The pending question was read by the reporter.)

A Paragraph 6 raised in my mind a number of radiation effects of alternative courses of action.

Q Did you give consideration to that paragraph prior to voting?

A The only thing I can tell you is I read the paragraph. It was one of a number of factors. There were no special elements here that disturbed me.

Q Did you give consideration to it prior to voting?

MR. POLLACK: I believe the witness just answered your question.

MR. TERSIGNI: I don't think he's been responsive.

Would you answer the question?

MR. SOUTHER: He said he read the paragraph. There was no specific thing there that disturbed him.

MR. TERSIGNI: He said all that, Mr. Souther, but I'd like him to answer my question.

MR. SOUTHER: Okay, that's why --

Q Did you give consideration to that paragraph?

BY MR. TERSIGNI:

Q Mr. Kendall, I show you Paragraph 9 of Mr. Souther's memorandum. The entire paragraph. And I ask you whether you considered that paragraph prior to voting.

MR. FRIEDMAN: Mr. Tersigni, will you give me a standing objection to this entire line of questions?

MR. TERSIGNI: Objection on what basis?

MR. FRIEDMAN: The one I stated.

MR. TERSIGNI: That it's irrelevant?

MR. FRIEDMAN: Yes.

MR. TERSIGNI: Yes. You may have such standing objection.

MR. FRIEDMAN: Thank you.

A We gave this paragraph attention in the context of Mr. Souther's memorandum.

Q Mr. Kendall, would you explain, sir, the reasons why you voted the way you voted on January 6, 1975?

A I think there were a number of factors.

First, Judge Fuld's opinion that the action had no merit.

Secondly, the concern that there would be a disruption or disturbance relative to the fund management ~~of~~ or the ongoing management of the assets of the shareholders.

Thirdly, that the processes used by the Anchor management in making the commercial paper purchase were consistent with the procedures used by other organizations, as I knew them at that time.

The list of people, organizations, that had purchased the Penn Central paper and the procedures under which they purchased it; the overall impact of the recovery, potential recovery on Fundamental shareholders as a benefit vis-a-vis the costs, risks, exposure, during the bottom of a serious stockmarket bear market.

I have set forth those reasons in my affidavit. Those are the ones I remember right now.

(Continued on page 212.)

Q Mr. Kendall, at the last session, you testified among other things that outside directors, in substance, have a responsibility for the quality of research. Do you recall that, sir?

MR. SOUTHER: No, I don't. Would you tell us where? You can just tell me.

MR. TERSIGNI: Page 44.

Q Do you recall giving that testimony, Mr. Kendall?

MR. SOUTHER: Read the question and answer, please.

(The pending question and answer were read.)

MR. SOUTHER: I think it's unfair to simply say that he said that. He tried to give you a very full answer as to what he saw as the duty of a director in monitoring activities, looking out for the benefit of fund shareholders.

Q Do you recall that, Mr. Kendall?

A I recall that I mentioned research within the context of the overall responsibilities of fund directors to shareholders.

Q And the research that you were referring to included research by the staff of the investment advisor; did it not?

A Yes.

Q You said a moment ago that you satisfied yourself that the processes followed by Anchor in connection with the Penn Central investment were consistent with the processes followed by other similar organizations; is that a fair statement?

A In the period under question, yes.

Q And as part of your participation as one of the quorum, did you make any effort to ascertain whether Anchor did any research through its own staff prior to recommending the Penn Central investment?

MR. SOUTHER: Would you read that question back, please?

(The pending question was read.)

MR. SOUTHER: Do you mean Mr. Kendall and the five or the people they employed to report to them?

MR. TERSIGNI: I mean Mr. Kendall and the other four gentlemen, either directly or through agents.

Q Did you make any inquiry as to what research Anchor had done prior to recommending this investment?

A It's my recollection that Judge Fuld's study and report examined this point. I could also recall that a number of members raised this questio at the December 18th meeting as well.

Q And prior to voting did you have an understanding as to whether or not Anchor had made any research through its own staff prior to recommending the Penn Central investment?

MR. SOUTHER: I object to the question. It's so far afield from what the issue is for this discovery, and even as broadened as we've permitted it, to show the independence of these people and their good faith in arriving at their judgment, are you now asking him to go back through every element that was in Judge Fuld's survey and study and report and every item that was discussed at the December 18th meeting?

MR. TERSIGNI: I don't recall any such question.

MR. POLLACK: I object to the question.

MR. TERSIGNI: You're interrupting now, Dan.

The witness testified just a few seconds ago, without any objection from any of the

MR. SOUTHER: I think your question is irrelevant.

MR. TERSIGNI: You can go on interminably. He just hasn't answered it. And if you're going to direct him not to answer it, please do that. But don't try to represent that he answered the question that he hasn't answered.

MR. SOUTHER: Excuse me, you're not going to get an answer because I'm going to direct him not to answer if you're going to keep it up.

MR. TERSIGNI: Are you directing him not to answer?

MR. SOUTHER: I just did.

MR. TERSIGNI: Fine.

Q Mr. Kendall, do you know who retained Mr. Souther's firm on behalf of Fundamental?

A No.

MR. TERSIGNI: Mr. Souther, can we have that information? Should I put that in my letter?

MR. SOUTHER: If you wish to.

MR. TERSIGNI: Can we get some agreement as to whether --

MR. SOUTHER: I'll respond to your letter.

I'm not telling you I'll give you that information or not.

MR. TERSIGNI: Okay.

MR. SOUTHER: I don't really think it's relevant.

MR. TERSIGNI: All right. I'll make my request and you can respond to it.

MR. SOUTHER: Off the record.

(Discussion off the record.)

MR. TERSIGNI: I have no further questions.

EXAMINATION BY MR. POLLACK:

Q Mr. Kendall, did you have any business relationship or professional relationship with Dr. Phillips prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Kemmerer prior to the time that you became a director of Fundamental Investors?

A No.

MR. TERSIGNI: I'm going to object to this question and to the last one in form and to this whole line on the grounds that you're that that would be the relevant period.

MR. POLLACK: Mr. Tersigni, if you will recall my cross examination of other witnesses, I asked precisely that other question that you have now just posed.

MR. TERSIGNI: But you haven't asked this witness.

MR. POLLACK: I plan to ask this witness that question.

MR. TERSIGNI: In the meantime I object to these and if you'll just give me a standing objection on that basis I won't interrupt anymore.

Q Did you have any business relationship or professional relationship with Mrs. O'Connor prior to the time that you became a director of Fundamental Investors?

MR. TERSIGNI: No.

A No.

MR. POLLACK: Mr. Tersigni, I will represent to you that when I complete this line of questioning, I'm going to ask the witness whether he has had any business or professional relationship with any of these people since becoming a director of Fundamental Investors.

Does that cure your objection?

MR. TERSIGNI: Yes. Assuming you do that, - it will.

MR. POLLACK: I will do that.

Q Did you have any business relationship or professional relationship with Dr. Robichard prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Dr. Burks prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. ~~Burks~~ Borr prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Hopkins prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Wade prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Monroney prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Hutchinson prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Martin prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Hopkins prior to the time that you became a director of Fundamental Investors?

A No.

Q Did you have any business relationship or professional relationship with Mr. Haire other than-the fact that Anchor Corporation was a member of a trade association with which you were associated prior to the time that you became a director of Fundamental Investors?

MR. TERSIGNI: Objection to the form of the question.

A No.

(Continued on page 223.)

BY MR. POLLACK:

Q Since becoming a director of Fundamental Investors, have you had any business relationship or professional relationship with Mr. Haire, Dr. Phillips, Dr. Kemmerer, Mrs. O'Connor, Dr. Robichaud, Mr. Burks, Mr. Burr, Mr. Martin, Mr. Chalker, Mr. Wade, Mr. Monroney or Mr. Hutchinson, other than in your capacity as a director of Fundamental Investors?

A No.

Q Mr. Tersigni objected to the form of the question when I asked you whether you had any business relationship with Mr. Haire other than in the Trade Association.

Can you tell us in your own words whether you had any relationship, business or professional, with Mr. Haire, at any time other than through the Trade Association?

MR. TERSIGNI: Objection to the form of the question.

Let me state the basis for the objection.

He testified at considerable length here in response to my questioning, exactly how he met Mr. Haire and what they did together and the contacts they had, whether it was once a month or three times a month, so on and so forth, and I don't think you ought to try to recapitulate that in a three-line question. It's on the record, and if you want to ask him whether he wants to add or take away anything from that testimony, maybe that's one way of handling it.

BY MR. POLLACK:

Q Mr. Kendall, did you have any economic relationship with Mr. Haire in the sense that he ever paid you money personally or you ever paid him money personally for anything?

A No.

Q Were you ever his partner in any kind of a business transaction?

A No.

Q Did you ever engage in any investment of any kind with Mr. Haire?

A No.

Q Did Mr. Haire ever attempt to influence the deliberations of the disinterested quorum?

MR. TERSIGNI: Objection to the form

of the question.

A No.

Q Did Mr. Haire attempt to influence your deliberations as a member of the disinterested quorum?

MR. TERSIGNI: Objection to the form of the question.

A No.

Q Did you ever discuss your deliberations as a member of the disinterested quorum with Mr. Haire other than in the meeting of December 18, 1974, when you summoned him to answer questions?

MR. SOUTHER: I think that question is not as clear as it may be, Mr. Pollack. I ask you to rephrase it.

MR. POLLACK: I will withdraw the question and rephrase it.

Q Mr. Kendall, did you feel under any pressure whatsoever from Mr. Haire with respect to your deliberations as a member of the disinterested quorum?

A No.

Q To your knowledge, did any other member of the disinterested quorum feel under any pressure from Mr. Haire with respect to the deliberations of the disinterested quorum?

- A Not to my knowledge.

Q To your knowledge, did any other member of the disinterested quorum feel under any pressure from any other person associated with Anchor, aside from Mr. Haire, with respect to the deliberations of the disinterested quorum?

A No.

Q Can you tell us once again, in your own words, the extent of your business relationship or professional relationship, if any, with Mr. Haire prior to the time that you became a director of Fundamental Investors?

A I had no business, professional, economic, financial relationships with Mr. Haire. The only relationship that existed was in the Trade Association, which I headed, and of which his company was a member.

Q Mr. Kendall, prior to reaching your decision as a member of the disinterested quorum, and specifically between July 24, 1974 and January 22, 1975, did you have any discussion whatsoever with Mr. Haire regarding the deliberations of the disinterested quorum other than at the meeting of December 18th, where you summoned him to answer questions?

A No.

MR. POLLACK: Thank you.

MR. FRIEDMAN: I have no questions.

MR. SOUTHER: I have no questions.

MR. TERSIGNI: I have a question.

BY MR. TERSIGNI:

Q Since January 22, 1975, have you ever discussed with Mr. Haire the deliberations of the so-called disinterested quorum?

A Other than a report to the full board at which Mr. Haire was present on January 22nd, I have not discussed the subject of our deliberations with Mr. Haire.

Q Did you give that report?

A I gave that report.

Q Did Mr. Haire make any statement on this subject at that meeting?

A I do not recall Mr. Haire making any statements on that -- as a result of that.

Q And that was a board meeting the same day that the quorum met to have Mrs. O'Connor reaffirm her vote?

A Yes.

MR. TERSIGNI: I call for production of the minutes of the board of directors meeting of January 22, 1975.

I have no further questions.

MR. SOUTHER: Okay.

Thank you.

(Time noted: 12:10 p.m.)

Leon T. Kendall
LEON T. KENDALL

Subscribed and sworn to before me
this 28th day of July 1976.

Florence G. Dwyer
FLORENCE G. DWYER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires October 9, 1977

UNITED STATES DISTRICT COURT - 660A

SOUTHERN DISTRICT OF NEW YORK

--x

HOWARD M. LASKER, et ano., :

Plaintiffs, :

-against- :

HARRY G. BURKS, JR., et al., :

Defendants. :

--x

Deposition of WILLIAM J. STEPHENS taken by the Plaintiffs, pursuant to decision by the Court, held at the offices Messrs. Seward & Kissel, 63 Wall Street, New York, New York, on February 26, 1976, at 2:30 p.m., before RACHEL BERGIN, a Shorthand Reporter and Notary Public within and for the State of New York.

Certified Shorthand Reporters
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REPORTING CORP
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-oOo-

IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

-oOo-

WILLIAM J. STEPHENS, called as a witness, residing at 21 Live Oak Road, Hilton Head, South Carolina, having been first duly sworn by the Notary Public (Rachel Bergin), was examined and testified as follows:

EXAMINATION BY MR. TERSIGNI;

Q Mr. Stephens, could you describe for us very briefly your background, sir? When I say your background, I am talking about basically your business professional background prior to the time you became a director of the Anchor funds.

A I was with the Bethlehem Steel Company for 40 years and then with Jones & Laughlin Steel Company for ten years.

Q Do I understand correctly that you became a director of the Anchor funds in 1973?

A Yes.

Q As of that time had you terminated your relationship both with Bethlehem and Jones & Laughlin?

A I terminated my relationship with Bethlehem in 1961. At that time I was still a director on the board of Jones & Laughlin Steel.

MR. SOUTHER: When you say at that time, so the record is clear.

THE WITNESS: ~~[illegible]~~ '73.

MR. TERSIGNI: When he became a director.

MR. SOUTHER: I realize that, I want the record clear.

Q Other than your position as a director with Jones & Laughlin, you did not occupy any executive position with the company; is that correct? As of 1973?

A No, I was the director of Jones & Laughlin Steel.

Q Prior to that time had you occupied an executive position with Jones & Laughlin?

A I was chairman of the board and chief executive officer.

Q Up until what time?

A December, 1971.

Q Subsequent to your becoming a director of the Anchor funds in 1973, did there come a time when you ceased to be a director of Jones & Laughlin or are you still a director of that company?

A I ceased to be a director of Jones & Laughlin in April of 1975.

Q Since 1975, when you ceased to be a director of Jones & Laughlin have you been basically retired except for your service as a director on the Anchor funds?

A No, I also currently serve as a director at the Equitable Gas Company at Pittsburgh and advisory director at the Pittsburgh National Bank in Pittsburgh.

Q For how long have you held those two directorships? Are they both directorships, by the way?

A Yes. 1962 and 1963. I am not certain.

Q So you held those positions obviously when you became a director of the Anchor funds and you have continued in those two positions and as a director of the Anchor funds?

A Yes.

Q Other than that, do you have any other full or part time business activity at the present time?

A Would that include activities for the Property Owners' Association or something of that kind?

Q Well, I am not sure. Are you a director of some Property Owners' Association?

A I am president. I am president of the Property Owners' Association.

Q In North Carolina?

A South Carolina.

Q Other than that, are there any other business activities that you engage in at the present?

A No, sir.

Q Mr. Stephens, can you fix more precisely by date when in 1973 you became a director of the Anchor fund?

A I became a director at the occasion of their annual meeting in the latter part of September.

Q Do you recall when the board of directors nominated you as a director for that annual meeting?

MR. SOUTHER: Object to the form of the question.

Q Do you recall when your name was placed on the slate of directors for that annual meeting?

A You say when?

Q Yes, when prior to the September annual meeting did the board place your name on the slate of directors that was being nominated?

A My name was on the notice of the annual meeting. When that was issued, I do not know.

Q Can you describe the circumstances under which you became a director?

A Sometime in April of 1973 I had a telephone call from Harvey C. Hopkins who was then a director of the fund. He told me he was, his term of office was ending and he was going to retire from the board.

He asked me if by any chance I might have any interest in becoming a member of that board.

Q Did you say you got this call in April of 1973?

A Yes.

Q Where did Mr. Hopkins live at that time?

A In California.

Q Did he call you from California?

A I don't know whether he was in California or any place else. He didn't, if I recall, he didn't say so.

Q Did you understand as a result of this conversation that Mr. Hopkins was suggesting that you might possibly replace him on the board?

A Not directly as a replacement for him. There was going to be a vacancy on the board. Maybe more than one. I don't know.

Q Did he tell you why he was making this suggestion to you that you give consideration of becoming a director?

A He told me it was his opinion that I might like to be a director on the mutual fund. He had a fine experience with it and just wanted to give me a chance to think it over.

Q Did he describe to you in this phone conversation what, if any, duties you would have as a director of the Anchor funds?

A I asked him the number of meetings that would be necessary to attend, whether they were one or two day meetings. General questions of that kind, and asked him to send me their latest annual report.

Q You mean of the Anchor funds?

A Yes.

Q Did he do that?

A Yes.

Q When you got this call from Mr. Hopkins, were you familiar with mutual funds and how they operated from the point of view of board of directors and so forth?

MR. SOUTHER: I object to the form of the question.

Q You may answer.

A Can I ask for the question.

(The pending question was read by the reporter.)

A No, sir.

Q Did you ask any questions of Mr. Hopkins from the point of view of what you as a director would be expected to do?

A Not in that ~~consideration~~ conversation.

Q I take it from your answer that you did ask that of Mr. Hopkins at some subsequent time?

A That's correct.

Q When was that?

A Recollecting it would be the early part of May, after receipt of the annual report that he sent me.

Q Was that a face to face meeting or --

A A telephone call.

Q Did you call him or did he call you?

A I called him in California.

Q Before we get to that second conversation, I'd like to ask you whether you have now told me in substance what you remember of Mr. Hopkins having said and your having said in that first April conversation, or is there something else that was said that you would like to add?

A I don't recall anything else being said in that first conversation.

Q I take it that sometime after that first conversation you did receive this material that you had asked that they send you?

A Yes.

Q Do you recall what that written material was?

A It was the annual report of 1972.

Q Was it for any specific fund in the Anchor group or was it for --

A It was Fundamental, and as I recall, maybe four or five others in the Anchor group.

Q What, if any, understanding did you have at that time as to whether you were being asked to consider becoming a director of one fund or multiple funds in the Anchor group?

A I understood it was a group of Anchor funds.

Q Did you know how many?

A If I recall correctly, there were five or six annual reports in that group.

Q Okay.

By the way, did you ultimately become a director of all of the Anchor funds or less than all?

A All of the Anchor funds.

Q So whatever number there were, whether it's five or six or seven, you became a director of all of them?

A Yes.

Q Again,getting back to the first conversation in April, how long had you known Mr. Hopkins as of the time you received that call?

A Approximately 30 years.

Q Was your relationship with Mr. Hopkins over that 30 years both business and social?

A Yes.

Q Did you consider Mr. Hopkins to be a close friend of yours?

A No.

Q Could you describe for me in your own words and as briefly as possible, the nature of your business relationship with Mr. Hopkins over those 3o years and whatever social relationship you might have had with him over those years?

MR. SOUTHER: Object to the form of the question. Insofar as it spans 30 years.

MR. TERSIGNI: I want a summary.

MR. SOUTHER: I thought you asked him how long he had known him. The relationship business or social may not have persisted throughout the 30 years.

MR. TERSIGNI: What I am asking is what was the nature of the relationship both business and social as of April, '73 as it had developed over whatever time period it had developed.

Q Do you understand my question?

A I think so.

When I first knew Mr. Hopkins he was an executive in the research department of American Can Company. I was an executive with Bethlehem Steel. From time to time we would have conversations on matters in which I was interested in in being inthe container business, he being interested in the steel business.

Later, and I cannot remember when, he left the American Can Company and went to ACF Industries. Mr. Hopkins, to the best of my recollection, retired in 1958 or thereabouts. After retirement he moved to the West Coast. Occasionally when he was in New York and we found our schedules were the same, we'd meet and have a talk about old times and that sort of thing.

Q Over the years that you knew him, prior to April, 1973, did you and Mr. Hopkins have social contacts? What I mean by that, did you ever visit him at his home or vice versa, that sort of thing?

A I visited him at his home and also played golf with him from time to time.

Q Did he reciprocate in the sense he visited with you in your home, that sort of thing?

A I can't recall that he did. We frequently would meet with our wives in New York and have dinner at night.

Q You say that was fairly frequently?

A Once or twice a year.

Q Did you ever, the two of you and your families, live in the same community or nearby communities?

A No, sir.

Q When you'd have occasion to visit each other's home or have dinner together and that sort of thing, where were you based and where was he based?

A I was based in Bethlehem, Pennsylvania. He was based in New York and lived in, some place in Westchester County, Chappaqua, I think was the name of the town he lived.

Q From time to time you might have occasion to come to New York and visit with him and he might have occasion to come to Pennsylvania?

MR. SOUTHER: I object to that. So far the witness said he doesn't remember the man ever coming to his home.

MR. TERSIGNI: Well, he said they had golf together and so forth.

Q Let me ask you the question:

Did he ever have occasion to come to Pennsylvania and meet with you either for lunch or for golf or --

A Not that I recall.

Q -- or for business?

A Not that I recall.

Q So whatever contacts you had with him were on occasions when you or your wife may have had occasion to come to New York and you would visit with him?

A Yes.

Q When Mr. Hopkins called you in April of 1973, did he tell you whether he was suggesting to anyone else other than you of the possibility of becoming a director of the Anchor fund?

A No, sir.

Q Other than saying that he thought you

might be interested in such a position, did he say anything about why he was calling you specifically?

A There might have been some ~~commentary~~ complimentary remarks passed, but I don't recall.

Q I take it those remarks would have been passing from Mr. Hopkins to you?

A Maybe both ways.

Q When you got that first call, did you have any interest in what Mr. Hopkins was suggesting to you?

A I had an initial interest, but wanted to find out more about it by examining the annual report, talking to other people that might have some ~~doubts.~~ thoughts.

Q Why did you think you might be interested in becoming a director subject to getting whatever information obviously you wanted?

A I can't elaborate on it other than to say I had an interest in it.

Q Did you have any familiarity with mutual funds as such?

A Not as such, but I was on the board of the Pittsburgh National Bank. I knew mutual funds existed and basically what they did, but I was not familiar at the time of the April telephone call what the procedures were and just how they operated.

Q Can you think of any reason why being a director of a mutual fund as opposed to an enterprise like Jones & Laughlin or what have you, might have been of interest to you?

MR. SOUTHER: I object to the question.

MR. TERSIGNI: I take it he can answer.

MR. SOUTHER: I didn't say he could answer. I don't understand or if you're trying to ask him now if he can think of any reason now why then he would have been interested or if there was anything in his mind at that time.

MR. TERSIGNI: I think it's basically the same thing.

A You asked me why I was interested? Just a general interest in business and commerce and industry, investments.

Q Did you have any mutual fund investments at the time?

A No, sir.

Q Had you ever had mutual fund investments as of that time?

A As of that time, no, sir.

Q Let's get back tothe second telephone

conversation after you received the annual report and had a chance to review it. I believe you testified that you then called Mr. Hopkins.

A Yes.

Q Would you tell us as best you can recollect what you said and what Mr. Hopkins said in the second conversation?

A The purpose of my call was to advise him that I was interested in becoming a director. We chatted about things. I asked him some questions that had arisen after examining the annual report. That was about the substance of the conversation.

Q Do you recall what those questions were?

A Yes, the relationship of the mutual board to the Anchor Corporation, their relationship to the Washington National Corporation. I just want to make sure I have determined properly from the annual report just what those relationships were.

Q What did Mr. Hopkins tell you on that subject?

A That I had put it together just the way it was.

Q Well, how did you put it together? What was your understanding from reading the material as to what the relationships that you have indicated were?

A The Fund operated with a board of directors,engaged an advisor,in this case the Anchor Corporation, to advise them on investments.

Q I think you also mentioned what you understood the relationship between Anchor and Washington National to be.

A Anchor in turn was owned by Washington National.

Q Did you have any particular reason for inquiring on this subject?

A I just want to get straightened out as to what those relationships were.

Q Did you know anybody at Anchor Corporation at that time?

A No, sir.

Q Did you know anybody at Washington National?

A No.

Q Or any of the Washington National companies?

A No, sir.

Q Did you have any discussion with Mr. Hopkins as of this second conversation with respect to what, if any, compensation you might expect for your services?

A I didn't ask him about compensation and he didn't volunteer anything, if I recall.

Q Did you ask Mr. Hopkins who the other directors of these funds were?

A No, because in the annual report ~~you~~ I had, and the things he sent me, there was a listing of the directors.

Q And you reviewed that list obviously? Did you see any names that you recognized?

A No, sir.

Q Did Mr. Hopkins say anything to you in the second conversation about what the next step would be with respect to your expressed desire to become a director?

A He said he would make that position known to the -- what did he call it -- the qualifications committee, I think, and inquired if by chance I was going to be in New York City. At that time I was scheduled to be in New York the last week in May, and we made arrangements to meet at that time.

Q Did he tell you who was on the qualifications committee?

A No, sir.

Q I take it you did not ask him?

A I did not ask him.

Q Have you told us your best recollection of everything that was said in this second telephone conversation with Mr. Hopkins?

A Yes.

Q Have you told me when that second conversation took place?

A No. From the best of my recollection, it was the early part of May.

Q Subsequent to the second telephone conversation, what was the next contact you had with Mr. Hopkins or anyone else with respect to your possibly becoming a director?

A In line with the second conversation we had, we made a date for dinner in New York and with Mr. Hopkins at that time were two or three other persons, and I don't remember at this time who they were. They were connected with the Anchor Corporation.

Q Would Mr. Haire possibly have been one of those persons?

A Possibly, but I can't testify that that was so.

Q You say this was for dinner?

A Yes.

Q Was it your understanding that the people you were meeting with were members of the qualificatons committee?

A At that time I don't remember that as a fact.

Q But you do remember that they were associated with Anchor?

A Yes, sir.

Q What was discussed at this meeting?

A Just a pleasant dinner gathering.

Q Was Mr. Kemmerer at that meeting? Does that ring a bell?

A I met Mr. Kemmerer the following day with Mr. Hopkins and rode out to Elizabeth in the same automobile with them.

Q The reason I ask you that is that I have been furnished with minutes of the qualificatons committee dated May 23rd, and they state in part: "The Chairman..." who was Mr. Kemmerer -- "...discussed the activities of the committee since the last meeting in April and a number of candidates under consideration. He discussed the meeting with Mr. William J. Stephens in New York on May 22nd."

I thought that may have been because he was at that meeting.

A It could be. I remember distinctly meeting him the following day at the Commodore Hotel. I don't remember whether he was at the dinner or not.

Q Were there three persons with whom you dined? Is that what you said?

A It's so long ago. It's three, four or five. It's difficult to get all that into focus.

Q Let's get back to what was said at the dinner meeting.

Can you briefly summarize what was said by you and the others?

A I don't recollect that anything particular was said. It was a pleasant dinner meeting. We probably talked about economic conditions and things of that kind.

Q Did you know that Mr. Hopkins was on the qualifications' committee at that time?

A At that time I did not.

Q When did you find that out?

A When I went over to Elizabeth and met formally with Mr. Hopkins and Dr. Kemmerer and at that time I recollect that Mr. Haire joined us.

And they drilled me about my background and that sort of thing.

Q Did they tell you what your duties might be if you became a director of the Anchor funds?

MR. SOUTHER: This is at the meeting of the directors'qualificatons committee?

MR. TERSIGNI: Yes.

A In general, yes.

Q When I ask this next series of questions, I am directing myself to the committee as such and the dinner meeting, if there was any discussion on the subject I am going to ask you about.

MR. SOUTHER: That's confusing.

MR. TERSIGNI: Otherwise, we have to do them separately. As I understand,what you're telling me, Mr. Stephens, on the 22nd you had dinner with some people that you understood to be connected with Anchor.

MR. SOUTHER: And Mr. Hopkins.

Q And Mr. Hopkins and Mr. Haire may have been one of them. The next day you met formally with the qualifications committee, Dr. Kemmerer, Mr. Hopkins and Mr. Haire?

A Yes.

Q What I am asking you is, at either of those two meetings were you informed what you might expect your duties to be in the event you became a director?

MR. SOUTHER: I respectfully ask you to the extent it's possible you exhaust his recollection with respect to the dinner meeting and then ask him questions confined to the meeting of the next day.

Q All right.

Let's talk about the dinner meeting. Did anyone explain to you what your duties might be if you became a director of the fund?

A Not at that time.

Q Was that explained to you the next day?

A Yes.

Q By the qualifications committee?

A Yes, in that meeting.

Q Anyone in particular?

A No one stands out in my mind on that.

Q What were you told you might expect your duties to be?

A Well, stress was made on the responsibility that the shareholders of the mutual funds, relationship of the mutual fund to the advisor. In general, the operating procedures of the advisor. And the trustee bank that kept documents and that sort of thing.

Q Did you understand that part of your responsibility would be to oversee the activities of Anchor Corporations as the advisor on behalf of the shareholders?

MR. POLLACK: Object to the form of the question. Specifically the word "oversee."

A As I interpret the question, the answer is no.

Q What did you understand your function to be with respect to the functions of Anchor Corporation advisor?

A The board of directors of the Fund employed the Anchor Corporation to advise them on investments.

Q Did you have any understanding as to whether you would have any function or responsibility with respect to what Anchor did other than to hire them?

A Had a responsibility to monitor the progress of the advisor. How well he was doing and what they were doing in the marketplace, progress ~~to~~ of the funds, the sales redemption of the funds, things of that kind.

Q Did you have any understanding with respect to what Mr.Haire's position was with respect to Anchor and with respect to Fundamental?

A He was an officer of the Fund, but his salary was paid for by Anchor.

Q What was his relationship to Anchor?

A I believe he was president.

Q Was it your understanding that as part of monitoring Anchor that would include monitoring Mr. Haire in the sense that he was the chief operating officer of Anchor?

A No, and when I said monitoring, I meant reviewing the progress of the Fund and not getting into the procedural operations of the advisors.

Q When you were interviewed by the qaulifications committee on or about May 23, 1973, were you aware that Mr. Haire and Anchor and Mr. Hopkins and Mr. Kemmerer had all been named as defendants in the Lasker suit charging negligence and other misconduct with respect to investments in Penn Central paper?

A No, sir.

Q Had you known that, would that have had any effect on whether or not you would have been interested in becoming a director?

MR. SOUTHER: Object to the form of the question.

You may answer it.

A It would have had no effect.

Q Did you understand after that meeting that Mr. Kemmerer, Mr. Hopkins and Mr. Haire would recommend you as a director to the full board?

MR.SOUTHER: Object to the form of the question.

A They did not so advise me. I presumed I was getting passed.

Q When you left this meeting, it was your understanding that they would report favorably on your qualifications to be director?

A They left me under that impression.

Q Did you know at the time that you were interviewed by these gentlemen that you as an outside director might in the future be asked to participate in making a decision on behalf of Fundamental as to what action, if any, Fundamental would take against these three individuals?

A Can I have the question again.

Q Let me try to rephrase it. Maybe I can make it more simple.

At the time you were interviewed by these three gentlemen who comprised the qualifications committee, did you know that within the near future you might be asked to participate as an outside director in determining whether or not Fundamental should sue these three people or take some other kind of action against them?

A No, sir.

Q Had you known that, would that have had any effect on whether or not you would have felt comfortable about becoming director?

A No, sir.

Q Would you say you had a high regard for Mr. Hopkins as of this time?

A Very high, yes.

Q Would you say your regard for him was such that you would presume that he would not be negligent in any business matters that he was associated with?

MR. SOUTHER: I object to the form of the question.

A Negligent is a hard word to understand for me. Mr. Hopkins was the sort of an executive that put out his best effort all the time.

Q You would presume, would you not, that in any endeavor that he participated in he would have not been negligent?

MR. SOUTHER: Object to the form of the question.

MR. POLLACK: And also the substance.

MR. TERSIGNI: Fine, you have objected.

MR. POLLACK: What do you mean by "presume"?

Q Do you understand the question?

A Presumed that Mr. Hopkins was --

Q Was your regard for Mr. Hopkins such that you would have presumed that he would not have been negligent in business deals with which he was involved?

A Yes.

Q And somebody would have to make a pretty clear case to convince you to the contrary?

MR. SOUTHER: Object to the form of the question.

MR. POLLACK: Objection.

Q You may answer.

A Again, it's difficult to answer. I would respond by saying the evidence must be clear.

Q Would you be able to distinguish between Mr.Hopkins whom you have known quite a few years and for whom you had such a regard that you would presume that he would certainly not be negligent in any business dealings that he might participate in and about a complete stranger that you might know nothing, do you feel you could distinguish those two as far as presumptions might go?

MR.SOUTHER: I object to the form of the question on presumptions.

A Well, if I met a stranger that I didn't know anything about I couldn't presume anything about him.

Q Was your relationship with Mr. Hopkins in May of 1973 such over the ~~28~~ 30 or some-odd years that you had known him that if you had at any time reached a conclusion on behalf of the Fund that he should be sued, that you would do so only with substantial reluctance?

A I would do so without reluctance in the ~~D~~discharge of my duties as a director.

Q Do you feel that if you would reach such a conclusion with respect to Mr. Hopkins or Mr. Haire or Anchor or Mr. Kemmerer, that you could have continued to serve as a director of the other Anchor funds other than Fundamental?

MR. SOUTHER: Please read that question back.

(The last question was read by the reporter.)

MR. SOUTHER: First of all I'll object to the form of the question. You're talking about feelings and what we want here are evidence, and secondly, your feelings are about what subjects aren't expressed in there.

A I can't answer the question. The beginning of the question, I don't understand.

Q If at any time you had determined on behalf of Fundamental that Mr. Haire, Mr. Hopkins, or Anchor or Dr. Kemmerer should be sued for millions of dollars, do you believe that despite that decision you could have continued to serve as a director of the other Anchor funds other than Fundamental?

A I'm not sure I understand. You are asking me if in Fund 1 these gentlemen were sued, woudl that inhibit me on being a director in 1,2,3 and 4?

Q Would you feel in your own mind you would feel comfortable to serve as a director of the other funds if you had decided to sue Mr. Haire or Mr. Kemmerer or Mr. Hopkins and so on, with respect to some transaction involving Fundamental.

A I hope I answer the question. I think the answer is yes. If I understand the question.

Q All right.

And as I understand your answer, what you are saying to me is that even though you may have decided to sue any of those individuals, that you feel you could still have continued as a director of these other funds?

A Yes.

Q If you had decided to sue Mr. Haire or Anchor, and having said that you feel you still could have continued to be a director of the other Anchor funds, do you believe that Mr. Haire and Anchor could have continued to give advisory services to Fundamental?

A No.

Q In other words, Anchor could not have continued with Fundamental, but you could have continued with the other Anchor funds?

A Yes.

Q Now, would you explain why you believe that?

MR. SOUTHER: I object to the form of the question.

A Well, in my capacity as a director if I sued or was engaged in a suit against Mr. Haire and/or others, I would do so because of my conviction that they should be sued. I would also conclude that they should not continue as an advisor to the funds.

Q How about the other funds?

MR. SOUTHER: What's your question?

MR. TERSIGNI: The other Anchor funds.

MR. SOUTHER: I object to the form of the question.

Q Do you feel they could continue as advisor to the other Anchor funds?

A No, sir.

Q In your opinion, once you decided that Anchor or Mr. Haire should be sued, neither of them should continue to render advisory services to any of the Anchor funds?

A Of which I am a board member.

Q Would you explain why you believe that if you had made the decision of Mr. Haire and Anchor should be sued that neither of them should be permitted to continue to advise any of the Anchor funds?

A Well, if you join in a suit against them for doing something that you think they shouldn't have done, I couldn't go along with having them continue in the same kind of advisory capacity ~~of advisory capacity~~ ~~of~~ to any fund in which I had a board position.

Q What do you mean when you say if you joined in a suit against them?

A Just that.

Q Suppose a stockholder sued Mr. Haire or Anchor claiming negligence or misconduct, do you think that the fact that the stockholder made such a claim should require Anchor or Mr. Haire to be terminated? To be terminated as advisors?

MR. SOUTHER: I object to the form of the question.

A If a shareholder sued Mr. Haire, before coming to a judgment I would wait and see what happened to the suit. The fact that the suit had got started --

Q Wouldn't mean anything to you.

MR. SOUTHER: Let him answer.

A Then I'd have to take into consideration the nature of the claim.

Q Now, the mere fact that a shareholder might make a claim against Mr. Haire or Anchor wouldn't mean, would it, that you as a director had no confidence in Mr. Haire or Anchor?

A The fact that the suit was filed.--

Q By a shareholder.

A By a shareholder?

Q Yes.

A I just accept the fact that the suit was filed.

Q And the mere fact that a suit was filed wouldn't cause you to conclude that you have to go out and terminate Mr. Haire; would it?

A The fact that the suit was filed would not make me come to that conclusion.

Q Would you want the suit to proceed and the facts to be determined before you made such a decision?

MR. SOUTHER: Object to the form of the question. What do you mean by suit to proceed and determine more facts?

Q Would you be interested as a director to having the court or a jury decide the fact before you reach a conclusion as to whether Mr. Haire or Anchor had been culpable or not culpable?

MR. SOUTHER: In every circumstances where a shareholder brings an action,is that your question?

MR. TERSIGNI: No, I think I stated my question.

MR. SOUTHER: You have asked him whether he would bring a suit or wouldn't bring a suit. Now you're into hypotheticals that every suit that might be brought on by a shareholder.

MR. TERSIGNI: I have asked him if a suit was filed by a shareholder alledging negligence or misconduct, would that conclude necessarily that Mr.Haire or Anchor had been culpable or terminated and he said no, it wouldn't. I am not asking him whether he would want such a suit to be determined by a court or jury so that the facts would be determined.

MR. POLLACK: I object on the grounds it's far too broad a question for any witness to answer. The circumstances could vary widely among different suits brought by different stockholders.

MR. TERSIGNI: Either direct him not to answer;otherwise, we are not going to finish this deposition.

MR. SOUTHER: We have tried to object and to educate you as to why we are objecting.

MR. TERSIGNI: Assume I am non-educable, are you directing him not to answer?

MR. SOUTHER: I am not directing him not to answer.

MR. TERSIGNI: Then let him answer , we'll save time.

Q Do you remember the question?

A Yes. Before coming to a conclusion, I would like to have all the information available surrounding the circumstances in the suit.

MR. TERSIGNI: Can you mark these three documents in series commencing with Plaintiffs' Exhibit 14 for identification.

(Minutes of the Qualification Committee for April 25, 1973, marked Plaintiffs'Exhibit 14 for identification, as of this date.)

(Minutes of Qualification Committee from 8/23/73, marked Plaintiffs' Exhibit 15 for identification, as of this date.)

(Extract of action taken at the Board meetings of the Funds on June 27, 1973, marked Plaintiffs' Exhibit 16 for identification, as of this date.)

MR. TERSIGNI: Exhibit 14 for identification are the Minutes of the Qualification Committee for April 25, 1973. The third page of the exhibit is an extract from the Board of Directors' minutes, I assume a Fundamental, for April 25, 1973. Actually, I should correct that, because the caption indicates it's an extract of action taken at Board meetings of the Funds on April 25, 1973.

15 for identification are Minutes of the Qualification Committee from 8/23/73.

16 for identification is an extract of action taken by the Board meetings of the Funds on June 27, 1973.

BY MR. TERSIGNI:

Q Now, Mr. Stephens, we have previously marked as Exhibit 10 for identification a schedule which purports to show the compensation you received during '74 and '75 in the form of regular fees make a representation.

MR. TERSIGNI: All right.

BY MR. TERSIGNI:

Q Did you receive any compensation during the year '74 and '75 other than what is shown on this schedule, Exhibit 10 for identification, in connection with your association or however you want to describe it, with the Anchor funds?

A Other than what you have here?

Q Yes.

A I can't validate these figures, but I would say that they are approximately correct.

Q Did you serve on committees during these years?

A Yes, sir.

Q And these were committees separate and apart from regular meetings at a board of directors' meeting; correct?

A Generally held on the same day. Not necessarily.

Q Would you be paid additional compensation for serving on these committees above and beyond your regular fees as a director?

A Yes, sir.

Q Now, those additional fees are not shown on this schedule; are they?

A I don't know. That's why I can't verify that.

Q I assume they are not,only because the column, the second column is captioned "Regular Fees." But I would ask that I be furnished with that information. I would also like Mr. Stephens' total compensation both regular and for committees and whatever else there may have been for the portion of 1973 during which you served. I think you took office in September.

A Yes, sir.

Q In connection with your services of director,do the funds or any of the funds pay for your expenses that you may incur such as travelling to and from New York and that sort of thing?

A Yes, sir.

Q Any other kinds of expenses that are defrayed?

A No, sir.

Q Do you recall a board of directors' meeting on July 24, 1974 at which the question of a disinterested quorum was discussed, Mr. Stephens?

If it will refresh your recollection, I will show you Exhibit 12 for identification, which are the relevant portions of the minutes of that meeting.

A Yes.

Q Have you now had an opportunity to review those minutes?

A Yes.

Q Do you recall this meeting of July 24, 1974?

A Yes.

Q Between this meeting of July 24, 1974 and January 6, 1975, when the disinterested quorum instructed counsel to seek dismissal of the Lasker case, do you recall attending other meetings of the board of directors of the Anchor funds?

A If I recall correctly, there was no meeting in August and there was a ~~usual~~ regular meeting in September, October and November.

Q At any time between those two dates, July 24, 1974 and January 6, 1975, do you recall voting on any matter at a board meeting in a manner different from Mr. Haire?

MR. SOUTHER: I'll object to the form of the question unless you please make precise what you mean by "voting." Do you mean discussions, Q Do you recall any decision between those dates that was made by any of the boards that you served on where you were in favor of making one decision and voted or indicated that you were in favor of that decision and Mr. Haire differed?

A No, sir.

Q Can you recall any such decision as to which there was a difference as between Mr. Haire and any of the other five directors constituting the quorum, that is, Mr. Kendall, Mr. Laun, Mrs. O'Connor, and Ms. Robichaud?

MR. SOUTHER: I object to the form of the question.

A Can I have the question again.

Q Let me try to rephrase it.

You already told me that you can't recall any disagreement, let me put it that way, as to any decision that you opted for as opposed to any decision Mr. Haire opted for during this decision.

MR. SOUTHER: In fairness, now, you are putting words in the witness' mouth. You are saying disagreement with any position. Your question --

MR. TERSIGNI: I said decision.

MR. SOUTHER: Your question was a question of voting.

MR. TERSIGNI: I said decision.

Q I think I am fairly stating your testimony in saying that you have testified that you can't recall any decision that you opted for that was different from what Mr. Haire opted for during this period.

A During the period from July 24th --

Q To January 6, 1975.

A And I said no.

Q Right, and I am asking you is your answer any different with respect to the other four directors who were in the five-person quorum, Mr. Kendall, Mr. Laun, Mrs. O'Connor and Ms. Robichaud?

A Not to my recollection.

Q Getting back to this meeting of July 24th, have you reviewed the first page of Exhibit 12 which shows the directors who were present?

A Yes, sir.

Q Does that accord with your recollection of who was present?

A I think so.

Q Can you give me your best recollection today of what was said and by whom at this meeting on the subject of the disinterested quorum.

A At the conclusion of the regular business of the board, the second, Mr. Wickers reported on a Goldman, Sachs matter in connection with Penn Central paper and then called to the attention of the board that having the Goldman, Sachs matter settled, it raised a question as to procedure on another suit. I believe that's the first time I heard the word Lasker. Mr. Wickers went through explaining the background, told the names of those that were named in the complaint and he pointed out the names of the current directors that were not named in the complaint.

Q That would have been the five directors of which you are one?

A Yes.

MR. KAMINSKY: I object to that representation.

MR. TERSIGNI: It's not a representation, it's a fact.

MR. FRIEDMAN: I don't think it is a fact.

MR. SOUTHER: It may not be a fact.

You interrupted him to say something to him.

MR. TERSIGNI: He just said my interpretation was correct.

Q Would you complete telling us what you can recall that Mr. Wickers said?

A He recited the names of the directors that were named in the complaint. Then he recited the names of the directors that were at the meeting and serving on the board that were not named in the complaint. Those names were Kendall, Laun, O'Connor, Robichaud and Stephens.

Q Did he say anything else on this subject?

A He said a procedural decision was involved.

Q Did he say what procedural decision?

A It had to do with the Lasker suit and what action the board was to take on it.

Q During these remarks by Mr. Wickers, were Mr. Burr, Mr. Haire, Mr. Hutchinson, Mr. Kemmerer, Mr. Martin, Mr. Philips, were they all present in the room?

A Yes, sir.

Q Did anyone ask them to leave?

A Not to my recollection.

Q Did you have any understanding as to why they were in the room at that particular time?

MR. SOUTHER: Object to the form.

A They were attending the meeting, the board, the regular monthly meeting and this was the last, we had disposed of all the regular matters that come before the board and this was the last item to be discussed. Nobody, to my recollection, asked ~~him~~ them to leave.

Q Was it your understanding that a decision would be made of any kind with respect to this final item which Mr. Wickers has raised?

MR. SOUTHER: Object to the form of the question. His understanding when, prior to the meeting or after it or had it been raised during the meeting.

MR. TERSIGNI: At the meeting.

MR. SOUTHER: Did he come to an understanding during the meeting, is that the question?

MR. TERSIGNI: Yes.

A I have to get the question again.

Q Let me rephrase it. It will be quicker.

As Mr. Wickers was making whatever remarks he was making concerning what you call the final item on the agenda, was it your understanding that this was something that you as a director were being asked to make a decision about?

A Yes.

Q Did you have any understanding as to what other directors in that room would participate in making that decision?

A There was agenda discussion, if I remember correctly, of the five persons who I previously named. We don't have to ~~so~~ go over that again, they were unique ~~as~~ inasmuch as they were board members, that had not been on the board at the time the suit was filed, and that were not named in the suit.

Q Well, was it your understanding that only those five would participate in this decision?

MR. SOUTHER: Which decision do you have in mind?

MR. TERSIGNI: Whichever decision he understood was to be made after Mr. Wickers finished his presentation.

A I earlier testified it was the procedural decision that had to be made and the conversation which led to a consensus among the five of us that we were unique, because of what I previously testified, and that we did indeed constitute a quorum of the directors and that it was necessary to plan something in connection with the suit.

Q Who said all of that, what you have just told me in your last answer? Was it Mr. Wickers?

A Mr. Wickers was the only persony beyond the five that entered into this discussion.

Q Was it Mr. Wickers that said what you have just told me, that the five were unique, that they constituted a quorum, that a decision had to be made and so forth?

A I think all that came out in the discussion that the five were involved in. This is with Mr. Wickers.

Q Do you recall anybody other than Mr. Wickers saying those things?

A No, sir.

Q But you remember Mr. Wickers saying those things?

A I said those things were developed in the conversation, just how much Mr. Wickers said and how much somebody else said is difficult to remember at this time.

Q Did you say any of those things?

A I remember commenting on what constituted a disinterested director, because in my opinion no director could be disinterested, but I was told that was the proper term. On reviewing my testimony, as is made clear in my cross-examination at p. 24, I intended to use the word "uninterested", not the word "disinterested".

Q Who said that, Mr. Wickers?

A Yes.

Q You had never even heard of the Lasker suit before this last item on the agenda was reached?

A I didn't testify to that.

Q Well, I'm sorry if I mistated it, please correct me.

A On the notice to the meeting that I attended in September, 1973, at which meeting I was elected the director, it was under the heading of litigation. There was a description, but the word "Lasker" was not used.

Q Well, I had understood you said a few minutes ago that the first time you heard the name Lasker was --

A That's right. The word Lasker. But in 1973 the word Lasker was not there. I had to connect the fact that the word Lasker was associated with what was in the notice of the meeting for September 26th.

Q You didn't know before this final item was reached and discussed by Mr. Wickers that you and four other directors would be asked to make any kind of a decision as a disinterested quorum; did you?

MR. SOUTHER: I object to the form of the question.

A I did not know anything about the decision before Mr. Wickers spoke.

Q You hadn't looked into how many directors constitute a quorum; had you?

A Under the Delaware rules a quorum is one-third.

Q My question is, had you prior to Mr. Wickers making his remarks, looked into how many directors constituted a quorum of Fundamental.

MR. SOUTHER: I think he has answered the question.

MR. TERSIGNI: I don't think he has. He told me what he thinks the Delaware rules are.

MR. SOUTHER: Based on 40 years or more as an executive officer of major corporations.

MR. TERSIGNI: But I am asking about Fundamental.

Q Had you made any inquiry --

A Not specifically with any particular fund. After all, the Delaware law applies to the works.

Q Did you express any view to Mr. Wickers making his remarks as to whether the disinterested ~~quorum~~ person could make the kind of decision that Mr. Wickers was talking about?

A No, sir.

Q This is something that he discussed; correct?

A The word "discussed" is wrong, I believe. Put it on the table.

Q Mr. Wickers did?

A Yes. Called it to the attention of the board.

Q You expressed a view, I believe you said that no director could be disinterested.

MR. SOUTHER: I object to the form of that question.

Q You may answer.

A I expressed a view that the term "disinterested director" seemed to me to be inconsistent, but the explanation was that that was a term recognized under the Investment Management Act of 1940, I think it was.

Q Who said that?

A Mr. Wickers.

Q Did Mr. Haire participate in any of the discussions?

A No, sir.

Q What was your understanding during the time that Mr. Wickers was making these remarks and Mr. Haire was present in the room, what was your understanding of the relationship between Mr. Wickers and Mr. Haire?

MR. SOUTHER: Object to the form of the question, because it assumes he was concentrating at that point in time of what their relationship might be.

Q You may answer.

A Mr. Haire was president and Mr. Wickers was secretary of the Fund.

Q Were you also aware that Mr. Haire was the chief executive officer of Anchor?

MR. SOUTHER: Object to the form of the question.

A I can't say I recollect that.

Q You didn't know that Mr. Haire was chief executive officer of Anchor Corporation?

MR. SOUTHER: Object to the form of the question.

A At that particular hour of the day I did not dwell on what kind of title Mr. Haire had beyond the word president.

Q Did you understand that he had some affiliation with Anchor?

A Yes.

Q What was your understanding of that affiliation?

A He worked for the Anchor Corporation.

Q Was there anybody to whom he reported at Anchor or was he the top man?

A Mr. Burr, Ed Burr, was his superior.

Q He was also in the room, correct, at this meeting?

A Yes, sir.

Q He didn't say anything either?

A No, sir.

Q Mr. Wickers,was he an employee of Anchor?

A Yes, sir.

Q Was it your understanding that he was subordinate to Mr. Haire and to Mr. Burr?

A Yes, sir.

Q What was your understanding with respect to why Mr. Burr and Mr. Haire were in that room while Mr. Wickers was making his remarks?

MR. SOUTHER: Object to the form of the question.

A I can only say what I said before. They were attending the board meeting and this was the last item for discussion.

Q Was it your understanding that these other gentlemen other than the five quorum directors would participate in any decision to be made on this final item?

A At that time I had no understanding about that.

Q Prior to the end of the meeting, on that date, did there come a time when you understood or were told that whatever decision was going to be made about the quorum or about retaining counsel, that that would be made by the five quorum directors, but not the others who are listed here as having been present?

A The consensus of the meeting was that we needed to know as much about the case as we could. These five people did not know the details of the case. So I cannot testify that there was a decision made that hour that this group would have full charge.

Q Now, the minutes say as follows: "The Board determined that the five directors who are not named as defendants in the Lasker suit and who constitute a quorum of the Board should make the decision after consulting with independent counsel as to what further action, if any, the Fund should take."

That's at the second clip. Did the board, in fact, make that determination at this meeting?

A What did you read from?

Q Right here, "The Board determined..."

My question, did the board, in fact, make that determination at this meeting?

A Not,to my recollection,at that time.

Q Do you remember participating in such a determination at this meeting?

A I remember the discussion. I remember the five disinterested directors were to move forward in examination of the circumstances and so on. I did not understand at that time that the five were charged with making a final decision.

Q When did you come to understand that the five were so charged, if ever?

A As we move on to the examination of the case.

Q What's your understanding as to who made that determination?

A The five directors.

Q The five directors?

A Yes.

Q Is it your understanding that they made that determination at a board meeting other than this one? The meeting of July 24th?

MR. SOUTHER: Which determination are you now talking about, as to what to do or whether they should do it.

MR. TERSIGNI: He just said the determination to charge them with making that decision. He just said that. I don't want to characterize his testimony.

A The quorum did not know at that time what the alternatives were, indeed whether there were any alternatives.

Q You're referring to July 24th now?

A Yes. We moved into the situation, got

Judge Fuld's analysis of the case, and it became clear that there were three alternatives that could be followed, but at the time of this meeting we did not know that those three alternatives did indeed exist.

Q Who selected Judge Fuld, if you know?

A The discussion with Mr. Wickers led to a question as to getting an independent outside legal opinion.

Q My question is: Who selected Judge Fuld as the attorney from whom this opinion should be obtained as opposed to Mr. Souther or Whitney North Seymour or F. L. Bailey or any other lawyer I might mention?

A The conclusion to proceed with the judge if he was available was made by the five disinterested directors.

Q And that included you?

A Yes.

Q Did Mr. Wickers mention any other possibilities to you other than Judge Fuld prior to you making this decision?

A I recall the name of Whitney North Seymour.

Q And you decided it should be Judge Fuld rather than Whitney North Seymour?

MR. SOUTHER: Object to the form cf the question.

Q Was that your own decision it should be Judge Fuld? Was that your vote or feeling?

A It was my feeling, yes.

Q Why did you feel it should be Judge Fuld instead of Whitney NOrth Seymour?

MR. SOUTHER: Object to the form of the question.

A He is very eminently qualified for the job. He stepped down from the bench as chief justice in New York the previous December. Mr. Wickers gave us a resume of --

Q The judge?

A Yes.

MR. SOUTHER: Can he please answer the question. You asked him why he thought Judge Fuld was ideal to be selected and he is trying to answer it. You're interrupting him.

MR. TERSIGNI: I don't think I asked him why he thought the judge was ideal.

Q Go ahead.

A It just seemed that that was the best move to make in a preliminary way. Mr. Wicker said he had inquired to the availability of the judge to give time to this matter and had indicated that ~~the~~ at that time, he would have time, so that seemed the wisest thing to do.

Q Did Mr. Wickers give you a biographical sketch of Whitney North Seymour?

A I don't remember that he did, but I have had some knowledge of Whitney North Seymout, not as deeply involved, I can't give you his resume.

Q Did Mr. Wickers say whether he had checked on the availability of Mr. Seymour?

A I don't recall him saying anything about the availability of Mr. Seymour.

Q Was your knowledge of Judge Fuld and his background equal to or more than your knowledge of Mr. Seymour's background?

A More than.

Q You knew of Judge Fuld?

A Not until Mr. Wickers recited his background.

Q Did you know of Mr. Seymour prior to Mr. Wickers' remarks?

A I had been involved in the case where Mr. Seymour handled and was the legal counsel for a co-defendant.

Q After saying that he had checked on the availability of Judge Fuld and had ascertained that Judge Fuld was indeed available, did Mr. Wickers say anything about what he recommended in connection with the retention of counsel?

MR. SOUTHER: I object to the form of the question. It assumes a fact not in evidence.

A He did not make any recommendation, to my recollection.

Q Was there any discussion among the five directors as to whether Judge Fuld or Mr. Seymour should be asked to serve as special counsel?

A There was discussion and the consensus was that if the judge was indeed available, he should be asked to ~~reveal~~ review the case.

Q Did anyone say why he or she thought Judge Fuld should be asked rather than Seymour --

MR. SOUTHER: You are so far beyond the scope of the discovery --

MR. TERSIGNI: You can direct him not to answer.

MR. SOUTHER: I do.

MR. TERSIGNI: All right.

Q Was there any discussion about what this would cost the Fund?

A No, sir.

Q Do you know what instructions were given to Judge Fuld in connection with his assignment?

A Mr. Wickers ~~visited~~ communicated with the judge and told him of the request of the five disinterested directors to examine the case.

Q Why was Mr. Wickers asked to do this?

A He was selected.

Q Was there any consideration to this being done by someone who was not affiliated with Anchor?

A You mean to visit the judge?

Q Yes.

A No such discussion.

Q You knew Mr. Wickers was affiliated with Anchor; did you not?

A Yes, sir.

Q Did it occur to you that perhaps the liaison with the judge might be with someone unaffiliated with Anchor, like Mr. Souther?

A I thought it perfectly proper for Mr. Wickers as secretary to deal with the judge.

Q Do you know what he told the judge?

A No, sir.

Q Did he ever report back to the quorum what he told the judge?

A My recollection is that he told the quorum at a later date, and I can't remember when, that Judge Fuld was indeed pursuing his examination of the case.

Q Is that all you can recall Mr. Wickers reporting back to the quorum concerning his conversations with the judge?

A That's all I can recall.

Q Do you know whether another special counsel had been consulted by Fundamental's board in October of 1970 concerning what rights Fundamental might have against Goldman, Sachs and others including Anchor?

A No, sir.

Q No one ever mentioned whether or not such special counsel was asked for advice on that subject?

A Not to my recollection.

Q If you had known that special counsel different from Judge Fuld had been asked for advice on that subject by the board in 1970, and that such advice had been given to the board, would you have wanted to know of that advice, what it was, in making your decision as part of the quorum?

MR. SOUTHER: I object to the form of the question.

A No.

Q Why not?

A We are proceeding with and studying the siutation as it existed in 1974 after the Goldman, Sachs case was decided. An inclusion in your thinking with that case, meant that something decided in 1970 may not even be relevant.

Q Did you understand that one of the things Judge Fuld was asked to give his opinion about was whether or not there had been any misconduct by any of the defendants as far back as 1969 and 1970 in connection with the investment management of Penn Central?

A I read the judge's letter of December 5th.

Q Did you understand that was one --

MR. SOUTHER: He's answering your question.

MR. POLLACK: You're cutting him off and it's rude.

MR. TERSIGNI: With all due respect I don't think he's been responsive.

MR. POLLACK: You haven't let him finish.

MR. SOUTHER: Let him answer the question, please, and if you don't think he's responsive, ask him another one.

MR. TERSIGNI: We're wasting time.

MR. SOUTHER: That's because you're interrupting.

Would you please finish your answer.

Q Let me rephrase my question. My question is:

Were you aware that one of the the things Judge Fuld was asked to give his opinion about was whether or not Anchor or the other defendants committed misconduct with respect to transactions which occurred as far back as 1959 and 1970.

MR. POLLACK: I object to the form of the question. I think it is highly misleading. It is not what Judge Fuld was asked.

A I have no knowledge of that.

Q Do you know when the investments that Judge Fuld was asked to express an opinion about were made?

A Yes, sir.

Q When were they made?

A Late November and early December of 1969.

Q And they were retained until 1970 when Penn Central went into bankruptcy; correct?

A Penn Central went into bankruptcy on June 21, 1970 and the paper was still with Fundamental Investors.

Q Was it your understanding that one of the things you were deciding and that you were consulting Judge Fuld about was whether or not Anchor or any of the other defendants had committed misconduct in connection with the making of that investment in 1969 and it's retention until the bankruptcy in 1970?

MR. SOUTHER I object to the question.

A My understanding was that the judge would review all pertinent matters surrounding the case.

Q Did you believe that was a pertinent matter?

A Certainly.

Q If you had known that a different special counsel in October of 1970 after the investment and after the bankruptcy,had been asked to give advice with respect to what the Fund's rights might be against Anchor and if you knew that such counsel had given such advice in 1970 when the board reserved decision with respect to Anchor, would you have wanted to know whether that advice was the same or different from what Judge Fuld said?

MR. SOUTHER: I object to these series of questions that you have put together in one question.

MR. POLLACK: I object to the form of the question and I want to point out it has been asked and answered.

A My answer is no.

Q Why not, sir?

MR. SOUTHER: Again, you have asked him that question and he has answered it.

A That's my decision.

Q Would it have mattered to you to know that special counsel in October of 1970 had expressed an opinion different from Judge Fuld?

MR. SOUTHER: Object to the question.

Q Would that have made any difference to you?

A I don't believe so.

Q Suppose you knew that Whitney North Seymour in October of 1970 had given an opinion different from Judge Fuld, would that have mattered?

MR. SOUTHER: I object to the question and not having information enough in my judgment in that line and I direct the witness not to answer any more.

Q You would have considered relevant in any opinion as to what the lawyer might have given?

MR. SOUTHER: I object to the question and direct the witness not to answer.

Q Do you recall Judge Fuld meeting with you and the other directors constituting the quorum on December 18, 1974?

A Yes.

Q Do you recall his saying to you that you should make your decision as an independent director?

A Yes.

Q Do you recall testifying earlier that when Mr. Wickers referred to independent directors at the July 24th meeting, you commented on that?

A The word was disinterested directors.

Q I'm sorry. Disinterested.

When Judge Fuld said that the directors should decide independently, did you ask him what he meant by independently?

A Independent of each other, is what I

understood.

Q . Well, would you explain more fully what you mean by that?

A Each person coming to their own conclusion.

Q In other words, you should reach the conclusion independently of Mr. Kendall and Mrs. O'Connor and Mr. Laun and Ms. Robichaud?

A Yes.

Q They all, and each one of them, should reach a decision independently of you?

A Yes.

Q You should consult together --

MR. SOUTHER: I object to that. He hasn't said they should consult together.

Q What do you mean when you said each one of you should have reached a decision independently of one another?

A Examined all facets of the case, and come to your own decision.

Q And that's what you understood Judge Fuld was saying?

A Yes.

Q Did you have any understanding whether Judge Fuld was talking about independently of Mr.

Haire?

A The thrust of the judge's remarks was directed to the five disinterested directors.

Q And you didn't understand the judge to be saying to you that your independence should be independent of Mr. Haire and of Ancher and of the other defendants?

MR. SOUTHER: I object to that question. That's not what he said and you're putting words in his mouth.

MR. POLLACK: I object to the form of the question. Why don't you ask him what he did understand rather than what he didn't understand. It's totally confusing.

Q Can you answer the question?

A You have to go back and read it.

MR. TERSIGNI: Please read the question back.

(The pending question was read by the reporter.)

MR. SOUTHER: I object and direct him not to answer that kind of a question, that specific question.

Q When the judge said to the five of you

Q Now, you have testified that your understanding of what the judge was saying was that the five directors should decide independently of one another; is that correct, sir?

A Should come to their own conclusion, yes, sir.

Q Did you understand that independence had anything to do with independence from Mr. Haire?

A Not in the context of the judge's remarks, but the five disinsterested directors resolved to have no contact of any kind with any other board member or official of anchor on this matter.

Q And that's your understanding of what the judge meant by independent?

MR. FRIEDMAN: Objection.

Q Mr. Stephens, was it your understanding that Judge Fuld was acting as counsel to the five man quorum or five director quorum?

A Not as counsel, no, sir.

Q Was it your understanding that he was advising the five person quorum?

A No, sir.

Q What was your understanding?

A He was to examine the entire case from every angle and give us a report.

Q Excuse me. When you say give us a report, that is why I am asking. Was it your understanding he was to report and to consult with the five of you who were the quorum or was he to report to and consult with the whole board including Mr. Haire and the other defendants?

MR. SOUTHER: Can he see what the minutes say of his retention.

MR. TERSIGNI: I would like the witness' understanding. Minutes are handed to the witness.

A My understanding was the judge would review the entire case and render a report.

Q To whom?

A To the five disinterested directors.

Q And not to the defendants, like Mr. Haire and so on and so forth?

A Very definitely not to them.

Q On December 18th, Judge Fuld appeared in person before the quorum and he discussed his conclusions and his reports?

A He made no conclusions.

Q He made no conclusions?

A No.

Q Did he appear before the quorum on December 18th and discuss his two reports?

A Yes.

Q Was it your understanding he reached a conclusion that Mr. Haire and Anchor and the other defendants had not committed any misconduct?

A Yes.

Q So he did reach a conclusion?

A When you say conclusions, I thought you were meaning, and if I am wrong, I am wrong, a conclusion as to what action the five should take.

Q All right. I understand.

So he reached certain conclusions and then on the basis of his conclusions he explained to the board the alternatives that the five director quorum had before it; is that correct?

A Correct.

Q On December 18th, he did appear and he went through his various conclusions and the alternatives and he did it in person before the five directors; did he not?

A Yes.

Q As he did that, did you understand that you were obtaining a report from a lawyer that was advising you and the other four directors?

A When you say advise, if that means to follow a course of action, the answer is no.

Q Well, advise in the sense that he was explaining to you legally and factually what alternatives you have to choose from?

A Yes.

Q He was advising you and he was rendering a report which was your understanding was to go to you, the five directors and not to Mr. Haire and the other defendants?

A That's correct.

Q Well, in light of that, why is it that Mr. Haire was present in the room when Judge Fuld gave this report?

A He was not present in the room when that report was discussed. As far as my recollection.

Q Let me show you the minues of December 18, 1974, which state on page 1, the following persons were invited to join the meeting at 3:10 p.m. for the purpose of responding to the questions of the five directors: Honorable Stanley H. Fuld, special counsel to the Fund; John Haire, Chairman and so forth; Donald Kemmerer, and Charles Philips, directors of the Fund; and Eugene B. Souther, counsel to the Fund.

Isn't it true they all came in together?

A Yes.

Q As Judge Fuld spoke, Mr. Haire was there;

was he not?

A The judge and the five were asking questions.

Q And Judge Fuld was responding and explaining his conclusions and the alternatives that you all had?

A No, we were asking questions of Mr. Haire -- let's see. Mr. Haire, Kemmerer, Philips.

Q The first five pages of these minutes, Mr. Stephens, related in very large part to the questions asked of Judge Fuld, and the responses that Judge Fuld made and on page 3, Judge Fuld explained the three alternatives which were available to the quorum and so on and so forth. And the minutes go on and on in this vein until page 6 where they stated: "The Board then addressed a substantial number of questions to Mr. Haire concerning the procedure followed by Anchor Corporation."

Now, I will represent to you that no where in pages 1 to 6 after page 1 shows Mr. Haire and Mr. Kemmerer and Mr. Philips walking in with Judge Fuld and Mr. Souther, up until page 6 when you started to question Mr. Haire; no where do these minutes indicate you request Mr. Haire to leave or he was other than present.

MR. SOUTHER: Would you also point out to the witness as long as you are talking about pages of these, that thereafter Mr. Haire was excused and Dr. Kemmerer and Philips were excused. And then there was a discussion with Judge Fuld and without them; would you point out to him, too.

Page 11 Mr. Kemmerer and Mr. Philips were excused from the meeting and them on page 13 Mr. Haire was excused from the meeting and then there was further discussions with special counsel.

Q During the first six pages of those minutes when Judge Fuld is explaining your alternatives, why was Mr. Haire present?

A Why was he present?

Q Yes, and why was Mr. Kemmerer present and Mr. Philips? I think they were all defendants in the case. Were they not?

A Yes.

Q Weren't they three of the people that you had to decide whether they should be sued?

A Yes, sir.

Q Why were they present when Judge Fuld

was giving the quorum this report?

MR. SOUTHER: I object to that. The man has testified that Judge Fuld had given two reports prior to that in writing and they were not asking him questions.

MR. TERSIGNI: I think the minutes, Mr. Souther, are quite clear. If you will bother to look at pages 1 to 6, you will see that Judge Fuld very specifically discusses the reports, the three alternatives and responses to various questions. And I want to know why was Mr. Haire and the other defendants present, period?

MR. SOUTHER: I understand your question.

A I don't recall that they were present, but the minutes indicate they were, so I accept that.

Q Do you think it was proper for them to be present?

A Yes.

Q Why?

A To add anything that they could add to the information.

Q Do you think that that was independence of Mr. Haire on your part to listen to Judge Fuld's explanation of your alternatives in the presence of Mr. Haire? Was that independence?

A Sure.

Q When was it decided, Mr. Stephens, that Judge Fuld's bill would be paid by the Fund as opposed to Anchor or anyone else?

MR. SOUTHER: Object to the question.

A At the meeting of January 22nd, I think the date was, 1975.

Q Do you recall who raised that subject for discussion?

MR. SOUTHER: Object to the question.

Q Did someone raise that subject?

MR. SOUTHER: Which subject, whether Judge Fuld's bill should be paid?

MR. TERSIGNI: By the Fund, that's my immediately prior question.

MR. SOUTHER: Okay.

A Mr. Wickers sent the bill to the meeting of the five directors. There was a discussion that led to the conclusion that the Fund should pay the bill.

Q Did Mr. Wickers forward the bill with the request it be paid by the Fund?

A No.

Q He simply forwarded it without comment?

Q Yes.

Q Who raised this subject for discussion among the five quorum directors?

MR. SOUTHER: Which subject?

MR. TERSIGNI: Payment of the bill.

A I don't remember any one particular person raising the question. The bill was on the table and it was discussed and the five decided that the bill should be paid. It was appropriate that the bill be paid by the Fund.

Q Did anyone suggest that it might appropriately be paid by Anchor?

A No, sir.

Q Did anyone question whether the bill was in such amount that it should be paid by the Fund?

A No, sir.

Q Did anyone comment that Mr. Souther had also been available to advise the quorum and why should the Fund have to pay for two lawyers?

A We wanted an outside --

MR. SOUTHER: He wants to know if anyone made that comment.

Q Did anyone raise that comment or area of discussion?

A No.

Q Did you understand throughout the period of July of '74 through January of '75 that Mr. Souther was also advising the quorum in addition to Judge Fuld?

A Yes.

Q Did it ever occur to you whether it was appropriate or necessary to have two lawyers as opposed to one?

A Yes.

Q Or three?

MR. SOUTHER: He answered your question. When you said two, he said yes.

Q Or three?

A The same answer.

Q Do you think it should have been two as opposed to one or three?

A It should have been two.

Q Why two as opposed to one or three?

A We wanted an independent outside --

Q Opinion?

A Opinion.

MR. SOUTHER: You asked him the

question; have the courtesy to listen to his answer.

MR. TERSIGNI: I'm listening to his answer, Mr. Souther.

MR. POLLACK: No, you're not.

A I gave you my answer.

Q You certainly did. I didn't mean to cut you off.

MR. SOUTHER: You cut him off and I vigorously object to it.

Q Do you have anything else you want to add to it?

A It was no need having three.

Q So you were interested in getting an independent opinion?

A Yes, sir.

Q Did you feel you couldn't get an independent opinion from Mr. Souther?

A No.

Q Well, if you could get it from Mr. Souther, why did you have to go to Judge Fuld?

A The quorum thought it advisable, very advisable to get an outside opinion.

Q But --

A Well --

Q . Go ahead, sir. Do you want to raise anything; you're lawyer is raising his hands.

MR. SOUTHER: You keep leaning over and cutting off the witness, which is not only unprofessional, it's rude.

Q Do you have anything else you want to add to that answer? I am not meaning to cut you off.

A No.

Q I am under pressure and I am trying to follow my questions rather expeditiously. Do you have anything else you want to add?

A Nothing more to add.

Q Was that your opinion also in addition to being the consensus of the quorum?

A Opinion of what, sir?

A That there should be two lawyers?

A It was my opinion and also the opinion of the other four.

Q Who is the firm's regular counsel, I mean the Fund?

MR.SOUTHER: I object to the question.

Q Does the Fund have any regular counsel?

MR. SOUTHER: Define what you mean by

"regular counsel."

Q Does the firm have any other counsel, Seward & Kissel being the firm?

A Not to my knowledge.

Q It's just Mr. Souther and you have Judge Fuld here for special counsel for limited purpose and whatever special counsel may have been retained in 1970; is that right?

A I am confused about special counsel retained in 1970. I know nothing about that.

Q I represent to you Mr. Philips has filed an affidavit saying that special counsel was retained in October of 1970 or advised the board in October of 1970.

A I know nothing about that.

Q I think you can accept my representation.

Now, aside from that special counsel in 1970 and aside from Judge Fuld, is it your understanding that Seward & Kissel, Mr. Souther's firm, are the only lawyers that service the Fund on a regular basis?

MR. SOUTHER: I object to the form of the question.

A I know of no other.

MR. TERSIGNI: Can we get a representation whether that is correct? It's not something which ought to need discovery about.

MR. SOUTHER: I think it's irrelevant who the Fund's consult from time to time about the Fund.

MR. TERSIGNI: Whether it's relevant or irrelevant, the witness says as far as he knows you're the only one,and I am simply suggesting for the sake of brevity and without waving your arguments on relevancy or irrelevancy, you simply confirm whether that is true or false; otherwise, I will pursue my discovery which I think is an unnecessary burden and unreasonable.

Is there any reason why we can't get a statement from counsel whether you're the regular counsel?

MR.SOUTHER: I don't think it's a appropriate for me to make a statement on that subject at this time.

Q On January 6th, the quorum met and made it's final decision; is that correct?

A That was a meeting in New York.

Q At the Yatch Club?

A Yes.

MR. TERSIGNI: Would you mark these minutes as the next exhibit, Plaintiffs' Exhibit 17 for identification.

(Minutes of the Board of Directors of January 6, 1975, marked Plaintiffs' Exhibit 17 for identification, as of this date.)

MR. TERSIGNI: Would you please mark this letter as Plaintiffs' Exhibit 18 for identification.

(Letter dated December 20, 1974, addressed to the quorum, signed by Mr. Haire, marked Plaintiffs' Exhibit 18 for identification, as of this date.)

MR. TERSIGNI: Would you please mark this memorandum as Plaintiffs' Exhibit 19 for identification.

(January 6th memorandum addressed to the quorum signed by Eugene P. Souther, marked Plaintiffs' Exhibit 19 for identification, as of this date.)

MR. TERSIGNI: 17 for identification are the minutes of the Board of Directors of January 6, 1975.

18 for identification is what appears to be a letter dated December 20, 1974, addressed

to the quorum, signed by Mr. Haire, bearing his printed signature.

19 for identification is a January 6th memorandum, addressed to the quorum, and signed by -- my copy bearing the typed signature of Eugene P. Souther.

BY MR. TERSIGNI:

Q Mr. Stephens, page 2 of Exhibit 17 which is the minutes of the January 6th meeting, states the director confirmed that none of them had been in contact with anyone affiliated with Anchor since the December 18, 1974 special meeting. It's the bottom of page 1 and top of page 2.

A Yes, sir.

Q Do you see that?

A Yes, sir.

Q Now, Exhibit 18 for identification is what appears to be a letter dated December 20th, two days after the December 18th meeting, addressed to the five of you by Mr. John Haire.

Do you recall getting that at the time on or after the 20th of December?

A Yes, sir.

Q Were there any other contacts between

you and Mr. Haire or anyone else affiliated with Mr. Haire or Anchor?

A I received this letter.

Q After the 18th?

A Yes.

Q You did have contact with Mr. Haire after the 18th?

MR. SOUTHER: I object to that. You are putting words in his mouth and he did not say that. He said he received the letter. He has testified he did not have contact. - -

Q Do you consider this letter to have been a contact with Mr. Haire?

MR. SOUTHER: Just a second. You showed him this and you invite his attention that says the directors confirmed this, none of them had been in contact with anyone affiliated with Anchor Corporation. That's precisely straightforward and correct, and now you're turning around and trying to put words in his mouth.

Why don't you ask him if he was in touch with anybody.

Q When you got this letter, Mr. Stephens, did you consider to be in contact with Mr. Haire?

A No.

Q What do you consider to be in contact with Mr.Haire?

A Telephone conversations, discussion, meeting. This was in response to the --

Q Yes.

A -- December 18th letter.

MR. SOUTHER: Please, I will state it one more time and if necessary we will adjourn. When the man is asked a question, you will please do me and him the courtesy of waiting for his answer. You have asked him a question. Let him answer it. Don't you interrupt and put words in his mouth.

Q Mr. Stephens, I apologize for these questions, but I would like you very much to answer them.

Do you feel I have been putting words in your mouth?

MR. SOUTHER: I direct the witness not to answer that.

MR. TERSIGNI: Do you feel I have been discourteous to you?

THE WITNESS: I don't feel you have been discourteous.

MR. TERSIGNI: Will you permit the witness to answer whether he believes I've been putting words in his mouth?

MR. SOUTHER: I am not going into a discussion of whether you think or he thinks. I want the record to be clear that when you have asked questions, you have cut off the witness and not let him finish his answer. Ask him that.

MR. TERSIGNI: We have the form, I think you said chairman of the board of Jones & Laughlin Steel Corporation here, and if it were my client, I would not like it said that a lawyer of my age and so forth was putting words in his mouth. I want the witness to answer that question. Now, are you going to permit him to answer?

MR. SOUTHER: I won't go into a discussion of what the witness' reaction is to you. I have put down my reaction.

MR. TERSIGNI: Yes, and there is a lot of bravado on the record.

MR. POLLACK: I think that Mr. Tersigni

as for several hours with too frequent repetition interrupted the responses of the witnesses or of this particular witness to further change or modify the question. I think it is most disconcerting, I agree with Mr. Souther. I think the witness should be permitted to finish his answers without interruption and then have the question put.

MR. SOUTHER: Just to finish that off, I think it only fair we ask Mr. Stephens if you want to go down that line of inquiry whether he thinks you have been interrupting him when he has been trying to give answers to your questions.

MR. TERSIGNI: You want to ask him that?

MR. SOUTHER: Yes.

MR. TERSIGNI: Go ahead.

MR. SOUTHER: Mr. Stephens?

THE WITNESS: You're asking me?

MR. SOUTHER: Yes, sir.

THE WITNESS: I have been interrupted in making answers, yes.

Q Do you believe at any time today I

intentionally interrupted you?

MR. SOUTHER: He can't go to your state of mind.

A I can't tell that.

MR. SOUTHER: You obviously did what you did.

Q There have been several occasions when at the end of a question, for example, at one point you said --

MR. SOUTHER: Please.

MR. TERSIGNI: You made certain comments about counsel and you're the one that asked the witness.

MR. SOUTHER: Finish the deposition.

MR. FRIEDMAN: I don't want to pursue this. I have other commitments today. I am leaving on vacation shortly and I want to get this done if we can.

MR. TERSIGNI: Are you finished?

MR. FRIEDMAN: I am finished. Discourteous with lawyers at best is distasteful.

MR. SOUTHER: Please go on with the questions and answers.

MR. TERSIGNI: We will finish this

point and I will go on, but I didn't raise it, Mr. Souther, you did. And I think you made statements about me that are unprofessional, and I don't intend for them to stand on the record.

MR. SOUTHER: Tell me about it when it's over. Let the witness finish first.

MR. TERSIGNI: You have interrupted me about 17 times so far.

MR. SOUTHER: I am asking you very nicely and politely and as sweetly as I can, please finish the questions and answers of the witness so he can leave for South Carolina and put on the record what you want to put on.

Q In one occasion you hesitated at the end of an answer, you said independent, and interjected and said opinion, and I have, and I confess doing this several times toward the end of a statement, interjected a word I thought you were about to say.

Is that the kind of interruption you're referring to?

MR. SOUTHER: I direct you not to answer. We are not getting into this discussion with counsel.

Q Do you consider exchange of letters to be contacts?

MR. SOUTHER: Object to the question. There has not been an exchange of letters that you have shown.

MR. TERSIGNI: You direct him not to answer?

MR. SOUTHER: Yes.

Q Did you have any exchange of letters between Mr. Haire and yourself between July, '74 and January 6, 1975?

A If your words, "exchange of letters," means I wrote to him and he wrote to me, the answer is no.

Q Were there occasions during that period when he wrote to you?

A He wrote to me, that I recall, on December 20th.

Q Is it your testimony that you do not consider this particular letter to have been in contact with Mr.Haire?

A That's my testimony.

Q Were there any occasions during this period when you wrote to Mr. Haire?

A No, sir.

Q Were there any occasions during this period when you communicated with Mr. Haire other than by correspondence?

A We were together at board meetings, September, October, November.

Q Do you consider those contacts?

MR. SOUTHER: Do you mean contacts with respect to the subject matter or contacts generally?

Q I said, do you consider those to be contacts? I think the question is quite clear.

A Yes, sir.

Q Did you have any such contacts between December 18th and January 6, 1975?

A I recall none.

Q Was there a board meeting in December of '74?

A I don't remember.

Q When do the board meetings --

MR. SOUTHER: Excuse me. You are aware there was a board meeting on the 18th of December. Do you mean in addition to that?

MR. TERSIGNI: Yes.

MR. SOUTHER: I think the witness is

confused on that.

MR. TERSIGNI: I don't think he is.

MR. SOUTHER: I think he is.

MR. TERSIGNI: He understood just what I meant.

MR. SOUTHER: No, he didn't.

Q Was there a regular board meeting in December of 1974?

A Yes.

Q When did that take place?

A My recollection is December 18th.

Q Are you referring to the board meeting of the quorum, the minutes of which have been previously marked?

MR. KAMINSKY: The December 18th minutes have not been marked, but you have marked a memo twice.

MR. TERSIGNI: Please mark the December 18th minutes as Plaintiffs' Exhibit 20 for identification.

(Minutes of Board of Directors, dated December 18th, marked Plaintiffs' Exhibit 20 for identification, as of this date.)

Q I show you Exhibit 20 for identification, which are minutes of a board meeting of December 18, 1974, attended by the five quorum directors.

I ask you if there was any other meeting of the board in December of '74, other than that one?

A My recollection is there ~~was~~ were no meetings other than December 18th.

Q Were there any committee meetings in December?

A I don't recall.

Q Did you have occasion to speak with or meet with Mr. Haire or anyone else at Anchor during December of 1974? I am including in that Mr. Wickers.

MR. SOUTHER: I'm sorry. I am confused. Do you mean other than on December 18th when he was there for the board meeting?

MR. TERSIGNI: Yes.

A I don't believe so.

Q During the period from July, 1974, when the manner of the quorum was first discussed by Mr. Wickers at the board meeting and January 6, 1975 when the quorum made its decision, did you have any contacts with defendants in the case other than persons affiliated with Anchor, like Mr. Hopkins?

A Mr. Hopkins died.

Q When did he die, sir?

A My recollection is two years ago, thereabouts. I'm not sure.

Q Any other of the defendants that you may have had contacts with other than defendants affiliated with Anchor?

A No, sir.

Q That includes Dr. Kemmerer?

A My recollection is that Dr. Kemmerer retired from the board in June.

Q Of '74? Or '75? Which?

A I'm not certain of that. I draw a blank on that. I'm sorry.

Q I show you Exhibit 19 for identification, which is a memorandum addressed to you and the other four quorum directors from Mr. Souther.

Do you recall receiving that memo?

A Yes.

Q Did you receive it on the date that it bears or at some later time?

A I can't justify as to the time of receipt. I don't know.

Q Do you understand what circumstances this

757A

memorandum was prepared?

MR. SOUTHER: Why don't you read it then?

A It was prepared in response to the board inquiry.

Q Who made the inquiry of Mr. Souther?

A I believe Mr. Kendall, after talking with the other board members.

Q Were you aware of the specific inquiries that were communicated to Mr. Souther?

A No, sir.

Q Were you aware that a memorandum would be written?

A No, sir.

Q Do you recall getting this memorandum and seeing it on the day that the committee made its final decision? When I say committee, I am referring to the quorum.

A My recollection is that this memorandum was available at the time of the decision, yes.

Q Did you review it prior to making your vote?

A I testified I don't remember when I got it.

Q I understand that.

A But I did review it prior to determining my course of action and decision.

Q Then I think it would be fair to say that having made your determination on the 6th, that you must have reviewed this memorandum sometime prior to your decision on the 6th.

A That's a reasonable conclusion.

Q You felt you understood what was in this memo?

A Yes.

Q Do you recall Mr. Souther discussing the possibility of a proxy contest?

A I have no independent recollection of that.

Q Look through the memo and see where he discusses proxy contest.

MR. SOUTHER: It might be quicker if you just read the memo.

A Very well.

Q Have you had an opportunity to review this memorandum now?

A Yes, sir.

MR. SOUTHER: The whole thing?

THE WITNESS: Yes.

MR. TERSIGNI: I think he said yes.

MR. SOUTHER: I was distracted, because if you may have observed I was speaking with one of the other counsel, and I want to be sure he has had a chance to read the entire memorandum.

Q Have you had a chance to read the entire memorandum?

A Yes.

Q Do you see where Mr. Souther discusses the possibility of a proxy contest?

A I see nothing about a proxy contest. I see the matter of mailing out a proxy.

Q Could I see the memo, please?

Would you look at paragraph numbered 6 and see if you find a discussion of proxy contest or a reference to a proxy contest.

A Yes, I see that.

Q What did you understand Mr. Souther to be telling you in paragraph 6?

A If we terminated the agreement, we would have to get an advisory, we would have to clear the situation with the SCC. You'd have to send out a proxy soliciting the shareholders. He raised a question that some shareholders may have been or will be in disagreement with the board's decision to terminate, in which case she states that that group that did not want to terminate would send out their own proxy.

Q Did you understand that in such a proxy contest the slate of directors might be nominated that might not include any of the five directors whose vote might cause the termination of Anchor?

MR. SOUTHER: I object to that question.

MR. POLLACK: Please note an objection to the form of the question.

MR. SOUTHER: I object to the question, because it is totally unfair to him to ask him did he understand something. If you ask him did he consider it, whether they discussed it.

MR. TERSIGNI: Do you direct him not to answer?

MR. SOUTHER: No, but I am trying to get you to ask questions that are to the point.

Q I guess you can answer.

A If I understood the question correctly, it was possible, it would be possible for a proxy to be issued by a group that did not agree with the decision and that it was possible that that slate would not include the names of the five directors.

Q Do you have any understanding why in the deliberations of the five director quorum this subject of proxy contest came up?

A This memorandum brings it up and prior to this memorandum, I do not recall it being discussed.

Q Well, I understood you said earlier that as a result of discussions among the five directors certain queries were put to Mr. Souther to which he responded in this memorandum.

A Yes.

Q And I would assume Mr. Souther is only responding to questions that the directors asked of him.

MR. SOUTHER: Object to that as to what your assumption is. The man said at the beginning, he doesn't know who put the question which elicited this memorandum. What you're assumption is as to what question was put to me is totally irrelevant.

Q You were privy to all the discussions among all the five directors; were you not?

A Yes.

Q You participated?

A Yes.

Q Do you recall any discussion by anybody on the subject of a possible proxy contest or a possible slate of directors that did not include your five?

A No, sir.

Q Then you have no idea what query was put to Mr. Souther that resulted in this memorandum?

A No, sir.

Q Was it your understanding on January 6, 1975 that in addition to the Fund having the right to terminate the advisory contact with Anchor, Anchor also had the right to terminate that contract?

MR. SOUTHER: I object to the form of the question.

Q Did you understand that?

A Yes. Under certain conditions pertinent to both sides.

Q Would you look at paragraph 9 of Mr. Souther's memorandum, and tell me what you understood from that paragraph.

MR. SOUTHER: Would you tell us at this late hour what understanding of my memorandum, of the room. I am asking questions and I have all afternoon been engaged in conversation and making comments and having discussions. This is the first time I have commented on that after you made repeated statements accusing me of interrupting the witness.

Will you please make your comments other than when I am questioning?

MR. POLLACK: Please put your next question. You seem to be losing control of yourself as well as the deposition.

Q Mr. Stephens, on January 6, 1975, when you voted to instruct special counsel to move for the dismissal of the Lasker action, did you believe that any other decision permitting the action to go forward would require the termination of Anchor as advisor to Fundamental?

MR. SOUTHER: I object to the question insofar as it may call for a legal conclusion.

MR. POLLACK: I object to the form of the question.

Q Could you answer it, please?

A My conclusion was that if we determined to go ahead with the Lasker suit it would be inconsistent to keep Anchor as the advisor to the Fund.

Q Was it your view --

MR. SOUTHER: Please let him finish the answer.

Q Finish your answer, Mr. Stephens.

A That would be true of the other funds.

Q Are you finished now?

A Yes.

Q Did that cause you to believe that if you permitted the action to go forward, that the board would, as a practical matter have to take action terminating Anchor?

A Yes, sir.

Q Did you base that belief at the time you made your decision in whole or in part on anything that Mr. Haire had said to you?

A Mr. Haire did not say a single word on that subject to me.

Q Does your opinion that Anchor would have had to be terminated include simply permitting the Lasker action to proceed in the name of the two stockholders who brought the action without the board of directors taking it over?

A I hope I understand the question.

Q Would you like me to try to rephrase it?

A Yes, I'm not sure about it.

Q I think I understand that you're saying at least this, that you believed it was inconsistent for you, for the board to affirmatively prosecute this lawsuit against Anchor to affirmatively sue Anchor and nevertheless retain Anchor as its advisor. I think you have said that.

A Yes.

Q What I am asking is, did you believe that the same result would be required,that is, the termination of Anchor in a situation where the directors voted not to affirmatively take over the suit and prosecute it against Anchor here, but to simply let the two stockholders proceed with the case they started and let the courts decide it in due course?

A I understand your question and the answer is yes.

Q Would you explain why?

A On the same basis as if we had, if we stood by and did nothing, as compared to asking for dismissal, we felt it was necessary for the interest of the Fund to ask for this dismissal.

Q I'd like to read to you a portion of the testimony which has been given by Mr. Haire in this case.

MR. SOUTHER: I object to that matter of proceeding. I think it's improper to read testimony of one witness to another witness and question him on that testimony. You would not be permitted to do it in court and I think it's unfair to do it in this deposition.

Q This is my question to Mr. Haire:

"Q Did you have an opinion whether your firm Anchor could continue as the advisor in the interest these five people decided to continue the suit against you?

"A I certainly did. I would have argued most vigorously that we could continue to serve.

"Q That you could?

"A That is correct.

"Q Have you read the affidavits submitted by various of those directives in these actions?

"A I have read them since they were filed and became a matter of public record.

"Q Did you give any consideration as to what course of action, if any, you or Anchor would follow in the event that these five directors determined this litigation should proceed?

"A I already testified to that.

"Q Is the answer yes, did you give consideration to a course of action?

"A I have just testified that it had been my assumption that if they decided to proceed to either permit the litigation to proceed or take it over themselves, that we would be able to persuade them to let us continue as advisor.

"Q Did you feel that if they made that decision to continue the litigation or to allow the litigation to continue, that you could have, that is, Anchor could have continued to serve this Fund?

"A Yes."

Now, had you been advised at the time you made your decision that Mr. Haire believed this, would that have ~~perfected~~ affected your thinking?

A No, sir.

Q Why not?

A I differ with Mr. Haire on his conclusion.

Q Why?

A I definitely think it would be inappropriate.

Q Why?

A To sue the Anchor company and continue to retain them as advisor.

Q Can you explain the reasons why you consider that inappropriate?

MR. SOUTHER: I think the man has answered that question three different times when you have asked him why. Each time he's given you his answer.

Do you have any other answer you can give to that?

Q Do you have any other reason in support of that opinion other than you would consider it inappropriate?

MR. SOUTHER: And inconsistent he said earlier.

Q And inconsistent?

A No, sir.

Q Mr. Stephens, I'd like you in your own words to state why you voted in favor of instructing litigating counsel to move for dismissal in this case.

A I weighed the matter very carefully in my mind and came to the conclusion that we should make every effort to have the case dismissed. I believed it to be in the ~~full~~ best interests of the ~~case dismissed~~ shareholders to have the case dismissed, and if the case went forward there would be a disruption to the Anchor ability to function properly, the possibility existed that top employees and investment advisors would seek positions elsewhere, and on the whole it was for the interest of the shareholders to make every effort to have the case dismissed.

Q I'd like to read again to you from the testimony of Mr. Haire.

MR. POLLACK: I object again.

"Q Did you have any consideration at the time, Mr. Haire, to whether or not Anchor could properly effectively and meaningfully continue to serve this Fund if the directors decided that the litigation should proceed."

I'm omitting the objections.

"A I have never at any time had any doubt that we could continue to effectively serve the Fund if we were requested to continue or permitted to continue by the board or the shareholders.

"Q And that would be true whether or not the lawsuit were permitted to go forward; is that right?

"A The lawsuit would have been disruptive, but we could have continued to serve."

Now, if you had known that Mr. Haire believed that at the time, would that have effected your reasoning?

A No.

Q Would you explain why not?

A I disagree completely with Mr. Haire's opinion.

Q Do you believe notwithstanding Mr. Haire's opinion the lawsuit would have so disrupted Anchor that they could not have served?

A They could not have served effectively.

Q Have you ever given me fully your reasons for your --

MR. SOUTHER: Are you asking the man to recapture everything that was said in the meeting of January 6th --

MR. TERSIGNI: No.

MR. SOUTHER: Excuse me, please.

-- which is set forth in the minutes. It might be more appropriate to say whether he agreed or disagreed with the reasons contained in the minutes, which were supposed to summarize what they said. You also have not called to his attention the fact he wrote a letter of December 31, 1974, I believe, in which he set forth certain reasons.

Now you're asking him, are all these his reasons or is this a capsule of his reasons or what are you asking him?

MR. TERSIGNI: I find it difficult to believe you don't understand my question. I have asked Mr. Stephens to state his reasons for his vote and I think he has gotten to a certain point, and I have now asked him have you given me fully your reasons. If there is anything you'd like to add to your reasons, please do so.

A There is also a factor of a lawsuit affecting ~~effecting~~ the relationship of the shareholders to the Fund, thinking maybe the Fund's in trouble, maybe we better get out.

Q What do you mean by that?

A Sell the shares.

Q Was it your opinion that permitting two shareholders to continue their suit against Anchor might cause shareholders to sell out their interest?

A Yes, sir.

Q Why did you believe that?

MR. SOUTHER: I object to that.

A Lawsuits have a way of running on and on. And with publicity about the lawsuit with the thought given that the advisor acted not to the best interest of the shareholder and so on, it's very likely that there would be a desire on the part of some shareholders to sell their holdings.

Q Was it your belief at the time you made your decision that if the lawsuit continued and Anchor was found to have acted improperly, that this might have caused shareholders to lose confidence in the Fund?

MR. SOUTHER: Would you read that back?

MR. POLLACK: Object to the form of the question.

(The last question was read by the reporter.)

confused.

Q I have or they have?

MR. TERSIGNI: Is he going to answer or not, if he's going to be permitted to answer.

MR. SOUTHER: The man said he's confused by your question which asks, assumes he has an understanding and went on to talk about to take into account,you might win the lawsuit.

Why don't you find out if they --

MR. TERSIGNI: Are you directing him not to answer?

MR. SOUTHER: Yes.

Q Did you give any consideration at the time you made your decision, Mr. Stephens, to the possibility that if this lawsuit were permitted to go forward and if it was found that Anchor had acted improperly in rendering the advisory services to this Fund, that that could undermine shareholder confidence in the Fund?

A I did not consider that. It was clear that the officers of the Fund from Judge Fuld's review had not acted with, I forget the term, gross dishonesty or something of that kind,as covered in the Judge's letter.

MR. TERSIGNI: I have no further questions.

MR. SOUTHER: I have some questions I want to ask the witness.

EXAMINATION BY MR. SOUTHER:

Q Mr. Stephens, earlier you said that you had asked at one point how a director could be disinterested, and could you please explain what you meant by that.

A I mishandled the word really. Disinterested and uninterested were sort of running together in my mind. I made the statement that directors must be interested in the whole thing. I have gotten used to being called a disinterested director, but I still don't like the term. But I understand it's used and that's what I am, and it doesn't mean I'm an uninterested director.

Q You were quarreling with the word disinterested on a theory that a director always has to be interested in the fund or corporation that he's a director?

A Yes.

Q From what I understand it was Mr. Wickers who explained that's the term that is in the

Investment Act?

A That's correct. Of 1940.

Q All right.

There are a number of questions about votes taken on the board and whether there were differences among members of the board and particularly whether you recall you or other members of the five disinterested directors voting in a way different from Mr. Haire.

You recall there was some colloquy from me what that voting meant, was it on board resolutions or broader.

Can you please explain to us whether in the time that you have been onthe board, there have been differences among members of the board, including Mr. Haire and the five of you with respect to any matters that have come before the board for consideration.

MR. TERSIGNI: Objection to the form of the question.

A I recall that early in 1974 Mr. Haire suggested to the board that instead of having monthly meetings we have a meeting every other month. And gave his reasons for that. The directors considered it, and said no, they did not approve that, we will meet every month except August, I think.

Q Do you know whether or not on that particular occasion the question of whether there should be bimonthly as opposed to monthly meetings was put to a formal vote of the board of directors?

A By formal vote you mean you raise your hand?

Q Yes, sir.

A No, everybody spoke their piece and it was very clear that the board of directors did not want to cut down the number of meetings.

Q Now, in addition to that instance, are there other instances that occurred during your board meetings when different members of the board disagree or take points that are at variance with those of other members of the board, including those proposed by Mr. Haire or other members of the Anchor group?

MR. TERSIGNI: Objection to the form of the question.

A The treasurer from time to time gives a financial report of a particular fund and recommends to the Board on behalf of management supported by Mr. Haire, that a dividend, let's say 12 cents to be paid. I remember one occasion where the board differed with that recommendation and changed the number. I believe the change was a lesser dividend.

Q In addition to specific instances which you have now recited, can you tell me whether throughout the period of time that you have been on the board there are, it is a general situation that people bring to bear their own points of view and discuss things, and during the matters that are presented there are differences expressed among members of the board or does everybody always say exactly the same thing and move in lock step on every issue that is presented to the board for consideration?

A The directors do not move in lock step as you described.

Q So in addition to these two instances you have given us, is it fair to say that the directors have different points of view which they express on different subjects as a general course?

A Yes.

Q You were asked some questions towards the end, as to you were asked to capsulize your reasons for voting to instruct counsel to move to dismiss the action, and you gave a capsule of those reasons. I'd like to show you what's been marked as Plaintiffs' Exhibit 17 for identification, which is the minutes of January 6, 1975 meeting of the board.

I invite your attention particularly to the portion that begins starting on page 4 where the board discussed each of the three alternatives available.

A You want me to read this?

Q Yes.

MR. TERSIGNI: What page are we on?

MR. SOUTHER: Starting on page 4.

A Yes, sir.

Q Now, did you share the views expressed here in the board of directors, in the board of directors' minutes for January 6th?

MR. TERSIGNI: Objection to the form of the question.

A I completely concur on every case.

Q At that time was the view you had as the proper course of action that the Fund should take and the propriety of adopting the course you followed as opposed to the other courses, accurately reflected in the minutes of that meeting?

A Yes, sir.

Q Is there anything in those minutes to which you did not then subscribe?

A No, sir.

Q I notice in here there is a reference on page 5 to a letter that you had addressed to the other four members of the disinterested director quorum and there was discussion with respect to that letter.

I show you a copy of that letter, and ask the reporter to please mark that as Fudamental Exhibit A for identification.

(Letter addressed to the Disinterested Director Quorum, marked Fundamental Exhibit A for identification, as of this date.)

Q Is that the letter that is referred to in the minutes of January 6th?

A Yes,it is.

MR. TERSIGNI: What page?

MR. SOUTHER: Bottom of page 5.

Q On January 6th when you were making your decision, did you have in mind and include as part of the basis for your decision, the points that you expressed to your fellow directors in your letter of December 31, 1974?

A Yes, sir. And this letter,as I recall, was discussed at the January 6th meeting.

Q Thank you, sir.

MR. SOUTHER: I have no further questions.

MR. POLLACK: I have a few questions for you.

EXAMINATION BY MR. POLLACK:

Q Did you have any business relationship or professional relationship with Mr. Haire prior to the time that you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Dr. Philips prior to the time you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Dr. Kemmerer prior to the time you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Mrs. O'Connor prior to the time that you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Dr. Robichaud prior to the time you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Dr. Burke prior to the time that you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Mr. Burr prior to the time that you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Mr. Chalker prior to the time that you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Mr. Wade prior to the time that you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Mr. Monroney prior to the time that you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Mr. Hutchinson prior to the time that you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Mr. Martin prior to the time that you became a director of Fundamental Investors?

A No, sir.

Q Did you have any business relationship or professional relationship with Mr. Hopkins prior to the time you became a director of Fundamental

Investors?

A Yes.

Q Please state the last time you had any business relationship or professional relationship with Mr. Hopkins?

A If I understand the question, it was on the occasion of me becoming a director of Fundamental, if that's what you mean.

Q That is not what I mean. I mean when did you last have any business dealings with Mr. Hopkins?

MR. TERSIGNI: I think he answered the question.

A Prior to becoming a director?

Q Yes.

A My recollection would be somewhere in 1958 or '59. Some place in there.

Q You did no business with Mr. Hopkins subsequent to that time; is that correct?

A I don't recall doing so.

Q Did anyone discuss with you the pendency of the Lasker action at any time prior to the time that you became a director of Fundamental Investors?

A No, sir.

Q Did any member of the qualifications

committee discuss with you the Lasker action at any time prior to the time that you became a member of the board of directors of Fundamental Investors?

A No, sir.

Q I have asked you a series of questions about business and professional relationship with certain individuals prior to the time that you became a director of Fundamental Investors. The individuals were Messrs. Haire, Philips, Kemmerer, O'Connor, Robichaud, Burke, Burr, Martin, Chalker, Wade, Monroney and Hutchinson.

I now ask you whether you have had any business relationship or professional relationship with any of those persons since the time that you became a director of Fundamental Investors other than in your capacity as a director of Fundamental Investors?

A No, sir.

Q Is the same true as to Mr. Hopkins, in other words, did you have any business relationship or professional relationship with Mr. Hopkins at any time subsequent to the time you became a director of Fundamental Investors?

A No, sir.

Q Did you ever have any economic relationship with Mr. Hopkins in the sense that he paid you money personally or you paid him money personally for any services?

A No, sir.

Q Did the Lasker action play any part in your decision to become a director of Fundamental Investors?

A No, sir.

Q Did you ever discuss the Lasker action with Mr. Hopkins?

A I don't recall doing so.

Q Did Mr. Haire ever attempt to influence the deliberations of the disinterested quorum?

MR. TERSIGNI: Objection to the form of the question.

A Did he ever?

Q Did he ever attempt to influence the deliberations of the disinterested quorum?

A No, sir.

Q Did you ever have any discussion with Mr. Haire about the deliberations of the disinterested quorum other than in the meeting of December 18th when you summoned him to answer questions?

A That was the only time. No other time.

Q . Did you feel under any pressure whatsoever for Mr. Haire with respect to your deliberations as a member of the disinterested quorum?

MR. TERSIGNI: Objection to the form of the question.

A No, sir.

Q To your knowledge, did any other member of the disinterested quorum feel under any pressure from Mr. Haire with respect to the deliberations of the disinterested quorum?

MR. TERSIGNI: Same objection.

A To my knowledge, no.

Q Did you feel under any pressure from anyone else connected with Anchor regarding your deliberations as a member of the disinterested quorum?

MR. TERSIGNI: Objection to the form of the question.

A No, sir.

Q To your knowledge, did any other member of the disinterested quorum feel under pressure from any person at Anchor --

A To my knowledge, no.

MR. TERSIGNI: Same objection.

Q I didn't finish the question.

-- regarding the deliberations of the disinterested quorum?

MR. TERSIGNI: Same objection.

A No, sir.

MR. POLLACK: No further questions.

MR. FRIEDMAN: I have no questions.

(Time noted: 6:05 p.m.)

-oOo-

William J Stephens

Subscribed and sworn to before me
this 28 day of July, 1976.

Florence G. Dwyer

FLORENCE G. DWYER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires October 9, 1977